

EXHIBIT B

1 The following is a rough draft and should not be duplicated.
2 It does have spelling and punctuation errors. Formatting
3 changes will also alter the page and line numbers as concerns
4 the final transcript.

5

6 THE COURT: All right. Be seated.

7 We're back in on the record in 18-749 global
8 versus Anthem. Plaintiff ready to proceed.

9 MR. MILLER: We are, Your Honor.

10 THE COURT: All right.

11 MS. MILLS: Yes, Your Honor.

12 THE COURT: Okay. And who is your corporate
13 representative?

14 MS. MILLS: Mr. Merchant has flown in from Canada
15 and he should be here any minute. But -- but he was -- Your
16 Honor, you had said that he didn't have to be here until 9,
17 our corporate representative.

18 THE COURT: Okay.

19 MS. MILLS: That we were meeting at 8 to talk
20 about these jury instructions.

21 THE COURT: Right. So let me -- let's go ahead
22 and convene the charge conference.

23 Any -- any -- anything to discuss on the
24 plaintiff's side?

25 MR. MILLER: Yes, Your Honor. We have I think

1 four points. The simplest, if you don't mind, starting there
2 is the verdict form. The unjust enrichment, page 4, of the
3 verdict form.

4 It's missing the table at paragraph 8. It just
5 says do you find -- do you find that global has proved its
6 claims for unjust enrichment on the following? And the
7 original version that the parties had submitted had the
8 charge straight out of the pretrial order that said the
9 original masters and then went through each -- each
10 trademark.

11 THE COURT: Why don't we just stop it then and say
12 Global Force -- do you find that Global has proved its claim
13 for unjust enrichment, period.

14 MR. MILLER: Fair enough. That's fine with us.

15 THE COURT: Question mark. Okay. What's next?

16 MR. MILLER: If you -- well, I'll go in order now.

17 On page 26, the sentence that begins with
18 therefore.

19 THE COURT: Okay.

20 MR. MILLER: That appears -- that section 1
21 through 3 appears to be inconsistent with the prime facia
22 evidence that a trademark -- a registered trademark is
23 entitled to a presumption of validity, ownership, exclusive
24 use, under 114, 15 U.S. C114.

25 THE COURT: So what's your proposal?

1 MR. MILLER: My proposal is that the registration
2 similar to the first language on page 24, to prove its claim,
3 GFE must establish the following facts by a preponderance of
4 the evidence. GFE --

5 THE COURT: I'm sorry. On page what? 24.

6 MR. MILLER: Page 24, Your Honor. I'm sorry if
7 I'm going too fast.

8 THE COURT: Go ahead.

9 MR. MILLER: Our proposal is to take the second
10 paragraph, 1 and 2, and insert it on page 26 in place of 1,
11 2, and 3. I'm sorry. In place of -- yes. That's right. In
12 place of 1, 2, and 3.

13 THE COURT: Why?

14 MR. MILLER: Why? Because we don't have to show
15 that it was used in commerce in connection with the sale or
16 offer of goods or services. We're entitled to that
17 presumption, which is under 15 U.S.C. 1114 -- I believe it's
18 1114(a). Where it says a registration shall be premium fast
19 evidence of ownership, validity and exclusive use in
20 commerce.

21 THE COURT: Well, I think if you read page 24, 25,
22 and 26 and take them all together, I think that takes care of
23 your concern.

24 MR. MILLER: Very well, Your Honor.

25 THE COURT: All right. Go ahead.

1 MR. MILLER: The next is page 51.

2 THE COURT: Go ahead.

3 MR. MILLER: Second paragraph that begins in order
4 to find, second to last sentence of that paragraph. We
5 believe the sentence shall say, if the completion of the
6 merger was not a condition of the implied license, Anthem
7 Wrestling's conduct may not constitute trademark infringement
8 or infringement of Mr. Jarrett's image or likeness because it
9 did not exceed the scope of the implied license. We
10 previously submitted a brief on that. And that is docket
11 231.

12 THE COURT: I read it. I'm going to keep it as it
13 is.

14 MR. MILLER: We maintain our objection.

15 THE COURT: All right. I think it's a fair
16 statement of the law.

17 MR. MILLER: All right.

18 That is it, Your Honor.

19 THE COURT: Okay. Ms. Mills.

20 MS. MILLS: Your Honor, I just have a couple of
21 things.

22 On the verdict form, number 3 on counterfeiting
23 under federal law. Are we -- are you there?

24 THE COURT: Go ahead.

25 MS. MILLS: Counterfeiting requires a federal

1 registration. And only one of those marks, they are
2 proceeding under with a federal registration, which is the
3 second one, Global Force Wrestling. So there should be no
4 GFW under that cause of action.

5 MR. MILLER: We have no objection to that.

6 THE COURT: Okay.

7 MS. MILLS: And then on the validity of the
8 trademark --

9 THE COURT: What page?

10 MS. MILLS: I'm finding it right now. On page 40.
11 The very last paragraph.

12 THE COURT: Go ahead.

13 MS. MILLS: Where it refers to an intent to use
14 applicant may rely on use by related company. That -- we
15 submit should not be here because it really doesn't have
16 anything to do with this issue. There's no question that a
17 related -- you can rely on a licensee's use, but that's not
18 what the issue is with respect to the validity of the
19 trademark. The issue is the wrong party filed the
20 application and the company that filed the statement of use
21 was administratively dissolved. So this isn't -- I'm afraid
22 this is confusing because it just doesn't relate to what
23 we're talking about.

24 THE COURT: Do you want to respond, Mr. Miller.

25 MR. MILLER: Yes, Your Honor. And I appreciate

1 Ms. Mills bringing that to the Court's attention. We believe
2 that that paragraph is correct except for what we asked for
3 in docket 230, which should solve Ms. Mills's issue. Under
4 TCA -- TCA -- Tennessee Code Annotated 48-249-605C an
5 administratively dissolved company continues its existence to
6 liquidate its assets. That should solve that problem. We
7 believe that should have been there. Sorry for not raising
8 that earlier.

9 THE COURT: Do you agree with that, Ms. Mills.

10 MS. MILLS: No, Your Honor. I don't agree. Because
11 the statute he's referring to -- an administratively
12 dissolved company can do acts in furtherance of winding up.
13 But they can only transfer assets to members of the LLC. And
14 that's not what happened here. It's -- it's -- we cited that
15 in our brief. The provision I'm talking about. You can't --
16 that company is not allowed to do anything other than
17 liquidate and -- and move assets to members. So I feel this
18 entire section just doesn't apply to the issue.

19 MR. MILLER: Your Honor, respectfully, our
20 position is that analysis in the statute is flatly wrong.
21 They are allowed to liquidate their assets -- it doesn't make
22 any sense. They are allowed to liquidate their assets to
23 creditors. That is the purpose of it. Under the statute,
24 liquidation has to go to creditors or has to go to other
25 companies before the members can take any distribution of the

1 assets of the company.

2 THE COURT: All right.

3 MS. MILLS: Your Honor, I have nothing further.

4 THE COURT: All right, sir. I want to look at
5 document 230. Do you want to present your motion.

6 MS. MILLS: Yes, sir. On the directed verdict
7 motion.

8 Yes, Your Honor the defendants would like to move
9 for directed verdict on a number of claims in this case. We
10 feel that the proof is beyond question and that a reasonable
11 jury could not find in favor of the plaintiff on these
12 claims. First of all, we feel like the proof is absolutely
13 unassailable as a matter of law on the license defense.

14 Mr. Jarrett admitted on the stand that he gave
15 permission to use the *Amped* content. He gave permission to
16 use the trademarks. He gave permission to use his image and
17 likeness. He gave his permission to use the mark Global
18 Wrestling Network. He admitted he's the one who selected
19 green for use with it. He admitted on the stand that he knew
20 when he gave permission to do those things that it meant
21 everything that flowed from that -- he said he agreed that by
22 many -- of his many years in the industry, that when you put
23 on a pay per view, there's going to be a DVD made. And he
24 knew that. And when you put on a DVD it's going to be
25 distributed to foreign licensees and to domestic licensees.

1 He knew all of that. So he knew exactly what was going to
2 happen. He -- and he approved it. And in account if a,
3 instigated it. And -- so he granted a license for the use of
4 the property in all the ways it was used. And he admitted
5 that. And he then admitted that he did not revoke that
6 license. He never told anyone they couldn't do those either
7 things either before or after he was terminated. Mr. Myers
8 admitted the same thing. He said that he had conversations
9 after the -- after Mr. Jarrett was terminated, but he never
10 told anybody they were not allowed to use the IP in the ways
11 that was it used. And we think on these facts and given that
12 the IP was not used beyond the ways it was expected to be
13 used when he gave permission, that's a license, and that's a
14 license that Anthem did not go beyond. And in light of the
15 plaintiff's admissions on that I don't think a reasonable
16 jury could conclude otherwise. Now, Mr. Jarrett argues that
17 the license that he granted was contingent upon the merger
18 going through. As we've argued before, Your Honor, in this
19 case, for there to be a contingency to the contract, to the
20 license, that contingency must be stated in clear express --
21 clearly expressed and unambiguous clear terms. He admitted
22 that he never told anyone that. He agreed that the term
23 sheet doesn't say that. He agreed that he never told anyone
24 that the license was contingent upon the merger going
25 through. Mr. Myers never told anyone that. Every witness

1 that took the stand for the defendants said that they had
2 never been told or heard that the license was contingent on
3 the merger going through.

4 Under Tennessee law, condition precedents are
5 disfavored. The law -- and we've cited it in this brief and
6 in previous briefs is unless that contingency is clearly
7 expressed then there is no contingency. It's just a
8 contractual covenant. And the breach of a contractual
9 covenant is a breach of contract. It's not infringement and
10 here we have -- the evidence is overwhelming. There's no
11 evidence to the contrary that that condition was not clearly
12 expressed. So it must be a condition -- I mean, it must be a
13 contractual covenant and the breach of it, if there was one,
14 is a breach of contract. And that's a claim that wasn't
15 brought. We believe that given the plaintiff's admissions
16 there is a license that Anthem did not exceed the scope of,
17 and that license was not contingent upon the merger going
18 through. And in that case, that means all of those trademark
19 related claims fail as a matter of law because they --
20 because Anthem had permission to do it. Likewise, the image
21 and likeness claim fails as a matter of law because that
22 requires use without consent. As well as the unjust
23 enrichment claim. I forgot to mention that one. Because if
24 there's a license that's a contract. And under Tennessee law
25 if you've got an implied in fact contract, then you can't

1 have unjust enrichment. So that license -- the existence of
2 it that is not continuing he want on the merger going through
3 is a straight up contract under Tennessee law. It is -- it's
4 not a condition precedent. And if it was breached, that's a
5 breach of contract, not infringement. And so we believe that
6 on all of those contingent -- all of those infringement
7 related claims that we are entitled to a judgment as a matter
8 of law because of this license and because the plaintiff
9 by -- based on his own admissions cannot show that we
10 exceeded scope of it.

11 In addition, we believe that we are entitled to
12 judgment as a matter of law on all of those infringement
13 related claims because the plaintiff cannot show that there
14 was a likelihood of confusion. The plaintiff admitted on the
15 stand that he participated in issuing that press release
16 announcing the merger to the wrestling world. He
17 participated. He put a quote in it. His wife had a quote in
18 it. And then he said that they wanted -- both parties --
19 wanted the wrestling consumers to believe there was a merger
20 happening. That's what the intent of that was. And he
21 further admitted that if consumers believed there was a
22 merger, they weren't confused because that's what they were
23 supposed to believe. He then admitted that there was no
24 intent by Anthem to pass off any goods falsely, as the goods
25 of GFE, and vice versa. There was no intent by GFE to

1 falsely pass off its goods as goods of Anthem. So based on
2 those admissions, there's just no -- there's no evidence that
3 anybody was confused or could be confused. Because if they
4 were confused, it was only because they thought a merger had
5 occurred but that's what the parties wanted them to believe.
6 Then, Your Honor, we heard from numerous witnesses that
7 cobranding of products and services in the wrestling industry
8 is a common thing. Companies often will jointly put on an
9 event or jointly offer services, and it had both marks on
10 there. In all cases it's got Anthem and it's got GFE. And
11 since consumers are used to seeing that, there is no
12 confusion. And nobody -- nobody appears to have been
13 confused. So on those facts, we believe that the plaintiff
14 can't show a likelihood of confusion. There's no --
15 obviously there's no surveys. There's no marketing data,
16 there's no marketing expert. There's nobody in this case to
17 come forward and say there's a likelihood of confusion other
18 than Mr. Jarrett's self-serving comments that he thinks there
19 is. And we submit that is not enough to carry the burden in
20 light of the way the wrestling industry works, in light of
21 the fact that both marks were on these things. There's no
22 confusion. And the plaintiff -- inasmuch admitted that --
23 because he said that there was no intent for anybody to
24 confuse anyone. So we believe that is a further basis to
25 dismiss all of those trademark infringement related claims.

1 THE COURT: Hold on a second.

2 All right. Anything else?

3 MS. MILLS: Yes, Your Honor.

4 Next, we believe that it is appropriate to dismiss
5 the federal trademark registration claim and the counterfeit
6 registration claim because that federal registration is
7 invalid. It was filed by the wrong party. At the time that
8 filing was made, there was -- the owner of it was GFE and not
9 Global Force Wrestling, the entity that filed. And we have
10 cited law for the Court that if the wrong owner files it's
11 void ab initio. End of the story. And that's what happened
12 here. Even if you don't accept that was it void ab initio,
13 it was further voidable because Global Force Wrestling was
14 administratively dissolved in 2015. They never corrected
15 that problem. And that entity, Global Force Wrestling, filed
16 the statement of use while administratively dissolved. That
17 is an invalid act. They can only do acts in furtherance of
18 winding up and as we were just discussing, it's the -- it's
19 the defendant's position that not only can they only do acts
20 if furtherance of winding up. They can only transfer
21 property to the members. And clearly that's not what
22 happened here. So that statement of use is invalid because
23 the -- Global Force Wrestling was administratively dissolved.

24 So on both of those bases, that federal
25 registration is invalid. And if that registration is

1 invalid, as a matter of law, the plaintiff cannot proceed on
2 their federal trademark infringement claim and they can't
3 proceed on their counterfeiting claim. And so we believe
4 we're entitled to judgment as a matter of law on those
5 claims.

6 In addition, we believe we are entitled to
7 judgment as a matter of law on their negligence claim. That
8 negligence claim arises from the so-called destruction of the
9 raw footage from the original 16 episodes of Amped.

10 The -- Scot D'Amore, Mr. Nordholm, both testified
11 that as a matter of course, once the pay per view is put into
12 the final broadcast ready form, then the old footage is
13 deleted. Because they've got something better. They've got
14 it finished. They've got voice over. They've got graphics.
15 They've got postproduction work. It's ready to go. A lot of
16 money's been invested in it. So it's done, it's finished.
17 It's better than before. So they have that version and they
18 have a version that is editable of that, both safely
19 preserved. And all of that footage winded up in those two
20 conversations. And if that's the case, it would not be
21 foreseeable to Anthem as a matter of law that there would be
22 any problem in deleting that footage. Secondly, the
23 plaintiff admitted that neither GFE, nor Mr. Jarrett, told
24 Anthem to preserve that -- those raw footage files. So
25 therefore, for that reason, Anthem had no -- it was not

1 foreseeable that they should have. And they had no duty to
2 absent someone asking. Certainly -- you know, this is GFE's
3 claim. And Anthem and GFE don't have a contractual
4 relationship. GFE is not a party to the term sheet. Anthem
5 has no duty that I can discern to preserve this -- these raw
6 footage files without an express request that they do so.

7 So it was not foreseeable. And there was no
8 damage even if it occurred. Therefore, we are entitled to
9 judgment as a matter of law on the negligence claim. For
10 similar reasons, we're entitled to a judgment on the
11 conversion claims because they arise from that same set of
12 facts. There's no damage because we've still got all of that
13 stuff safely preserved. And so there's no -- with -- without
14 being able to show any damage, there should be no conversion
15 claim.

16 Also we're entitled to judgment on any claims for
17 statutory damages under the Lanham Act. We've cited law
18 there for the Court that to be able to -- to seek statutory
19 damages, you have to have -- show some showing of actual
20 harm. There's zero showing of actual harm. Nobody has been
21 confused. There's no -- no consumers came in here and said
22 they were confused. There's no evidence of that. Therefore
23 they should not be able to seek statutory damages and we're
24 entitled to a judgment on those claims.

25 And finally, we are entitled to a judgment on

1 their claims for punitive damages. The Court has heard --
2 for some of the same reasons why there's no likelihood of
3 confusion, there can't be any willful infringement here
4 because Anthem believes -- and I think as a matter of law --
5 had a license to do what it did. And not only did it have a
6 license, the plaintiff admitted that the purpose of combining
7 the marks and everything was for people to believe that the
8 companies had merged. And so if that was the intent -- and
9 Mr. Jarrett participated in it, and that's what consumers
10 believed, then it can't be a willful infringement. That --
11 they believed what the parties wanted them to believe:
12 There's a merger happening here. Further, because Anthem's
13 marks were on all of this property, there can be no serious
14 argument that Anthem was trying to, you know, slide its
15 products by as GFE products. They weren't. The marks had
16 equal dignity on there and they look liked a cobranded thing.
17 And that's what it was. So on these facts we believe that it
18 is -- that the plaintiff just simply cannot make the required
19 showing of recklessness and fraudulence and all of that sort
20 of thing that would entitled it to seek punitive damages.
21 And we ask the Court for a judgment on those claims as well.

22 THE COURT: Thank you very much. And here's what
23 I think. I think the case comes down to whether or not --
24 how much weight the jury chooses to give to Mr. Jarrett,
25 Mr. Nordholm, and/or Scot D'Amore. And depending on how they

1 judge that testimony, and how much weight they give that
2 testimony, how much credibility they give or believability
3 they give, plaintiff could win on one or more of their claims
4 or plaintiffs could lose on all of its claims. It's not my
5 role to weigh the evidence. That -- I cannot do it on this
6 motion. So I've got to deny it.

7 Mr. Miller, on your request -- so you want to add
8 this one sentence an administratively dissolved company
9 continues its existence to liquidate its assets?

10 MR. MILLER: Yes, Your Honor. The appropriate
11 statute so --

12 THE COURT: No. No. I'm with you. That's the
13 one sentence you want to add?

14 MR. MILLER: That is the one sentence.

15 THE COURT: Okay. I'll add that.

16 MR. MILLER: Okay.

17 THE COURT: Okay. The jury's ready to come in --

18 MR. MILLER: Your Honor, may I -- we ask for
19 directed verdict as well.

20 THE COURT: Okay. Well, you didn't file anything.
21 But go ahead. Make it for the record. I think your argument
22 is going to apply there too, but go ahead.

23 MR. MILLER: No, Your Honor. No -- no -- I mean
24 no disrespect, but it doesn't.

25 THE COURT: Okay.

1 MR. MILLER: The two -- we're moving on their
2 counterclaims.

3 THE COURT: Okay.

4 MR. MILLER: The issues are they haven't proven
5 anything for their breach of contract, duty of loyalty. If
6 we show good faith, they don't have a basis for their breach
7 of duty. They haven't shown any harm whatsoever. And so we
8 think that claim should fail. I'll make this short. And
9 then on the unjust enrichment claims, they press two forward,
10 one against Mr. Jarrett. The only basis they've asserted for
11 their unjust enrichment claim is the \$40,000 that was paid by
12 Anthem on behalf of GFE to release the master recordings or
13 the master files. There's nothing to show that that benefit
14 in any way was for Mr. Jarrett individually. There's nothing
15 to show that he received any benefit whatsoever. They never
16 paid him a cent. The testimony was completely and
17 overwhelming that they never paid him a cent for anything for
18 that -- for that master file. I'm not saying they didn't pay
19 him for his employment, but I'm saying for that master file.
20 And so the unjust enrichment has to fail. When it comes
21 to -- when it comes to the unjust enrichment claims against
22 GFE, the \$40,000 was on behalf of Anthem for its benefit.
23 They are the only person that benefited. They have not paid
24 any money to GFE for use of the master files. The master
25 files are gone. I think we can argue all day whether they're

1 the same or different, but they're gone. And the law is --
2 and we can submit a brief if Your Honor would like, that if
3 there was a voluntary decision to do something that is solely
4 for their benefit, they cannot claim that unjust enrichment
5 occurred because it was a voluntary act. And so -- it's
6 equivalent -- and I believe the case was similar to a gift to
7 someone, and therefore it was a voluntary act. I'm happy to
8 cite that for the Court. I don't have the cite on me at this
9 moment, but we're happy to do that. Actually, I may. No,
10 Your Honor, I don't have that cite for you.

11 THE COURT: I'm going to deny the motion. I still
12 think your motion depends on how much weight the jury chooses
13 to give. I will say if -- if the jury finds that while he
14 was a -- that when Mr. Jarrett was a corporate executive, he
15 engaged in this activity to the detriment of Anthem, then,
16 yeah, there's a basis for the breach of duty of loyalty
17 claim. And I think I raised that during the pretrial
18 conference. I think we're all going to have to do some
19 research if the jury were on to come back and find for both
20 of you on the unfair competition claim. But I'm going to let
21 all of it go to the jury.

22 Now, a couple more things before I bring the jury
23 in. So during your closing -- Mr. Miller, you asked for 30
24 minutes, doing a rebuttal for ten. I'm sorry. 35 minutes
25 and a rebuttal for 10.

1 MR. MILLER: Yes, Your Honor.

2 THE COURT: And then you've got 45 minutes to use.

3 So there will be no reference to COVID-19.

4 Specifically, there will be no reference that the delay was
5 caused by COVID-19 or any issues about the defendant's
6 counsel possible exposure. I'm going to tell the jury that I
7 appreciate their patience. I appreciate -- I want them to
8 know that the delay was to make sure that the jury, the
9 parties, the counsel, the Court staff are all safe. And
10 that's really all they need to know. So there will be no
11 reference to COVID-19 in anybody's closing, the delay or
12 any -- any way -- that shouldn't be discussed at all.

13 Finally, Mr. Miller, you made a motion to strike
14 during --

15 MR. MILLER: I'm trying to --

16 THE COURT: The testimony -- do you remember that?

17 MR. MILLER: Your Honor, I believe it was
18 Mr. D'Amore's testimony regarding yanking Mrs. Jarrett's arm?
19 Is that --

20 THE COURT: No. You made an objection -- I think
21 it's Mr. Nordholm's testimony where he said there is a talent
22 contract with Mr. Jarrett, as well as his days when he was
23 talent and predecessor. And you moved to strike that. And
24 I'm going to overrule that.

25 MR. MILLER: All right. Thank you, Your Honor.

1 THE COURT: Okay. So is there anything else in
2 the record that needs to be resolved, Mr. Miller? I think
3 that -- I think I've covered everything. Do you have
4 anything on your list?

5 MR. MILLER: No, Your Honor. We're ready to
6 proceed.

7 THE COURT: Okay.

8 MS. MILLS: No, Your Honor.

9 THE COURT: Bring in the jury.

10 MS. MILLS: Your Honor, can Mr. Merchant come sit
11 back here?

12 THE COURT: Oh, is that him?

13 MS. MILLS: Yes.

14 THE COURT: Okay. Sure.

15 MS. MILLS: Okay.

16 THE COURT: All right. Bring in the jury.

17 Oh. Hold on.

18 In your closing, you all cannot quote from the
19 jury charge. You can say you anticipate that the Court may
20 charge you. You can say words to that effect. But you can't
21 quote from the charge itself.

22 MR. MILLER: Your Honor, can we say the elements
23 will show. . . and without going into the elements.

24 THE COURT: You can say I believe the Court may
25 charge you.

1 MR. MILLER: Fair enough.

2 THE COURT: Go ahead. Bring them in.

3 (Jury present.)

4 JUROR: Good morning.

5 THE COURT: Good morning.

6 All right. Be seated.

7 Ladies and gentlemen of the jury, good morning.

8 And thank you for your patience, first of all. I realize we
9 had a bit of a delay. And I want you to know the delay was
10 my decision to make sure you're safe, to make sure the
11 lawyers are, the parties are safe, and that my court staff is
12 safe. And I'm confident now that we all can proceed here.
13 So I appreciate your patience. I appreciate each of you
14 being here. I'm aware that you've got another life to live.
15 And I'm going to be very cognizant and sensitive of that --
16 commitments you have made to go forward. So rest assured
17 we're all on the same page there.

18 So we're at the point in the trial where the
19 lawyers are allowed to make closing arguments. This is their
20 opportunity to present and make their arguments about the
21 proof that you've heard. Each side has 45 minutes. And by
22 tradition, the plaintiff gets the first word and the last
23 word in argument. So the plaintiff is going to use 35
24 minutes of its time initially. Correct?

25 MR. MILLER: Yes, Your Honor.

1 THE COURT: And then save ten minutes for
2 rebuttal. And then the defendant will use all of its 45
3 minutes. When the lawyers have done their closing arguments,
4 we're going to take a break to refresh ourselves because then
5 you'll come back in the courtroom. And on your chair will be
6 a copy of the jury charge. So that's your copy. And you can
7 mark on it. You can do as you please with it. But I found
8 that by having a copy for you to follow along it will help
9 you understand what the charge is telling you.

10 So you'll have that on your chair when you come
11 back. And then I will present the charge to you. At that
12 point, you'll then retire back to the jury assembly room.
13 The evidence, in the form of exhibits, will be back in that
14 room. You need to choose one of your number to operate the
15 computer. And the IT person will be there to help whoever
16 wants to do that. I just suggest one just so one person's
17 touching the computer, the laptop, so you don't have to worry
18 about anything. And as you already know, you have an
19 incredibly big room to spread out and deliberate on the case
20 and free access to the coffee and all the snacks you want.

21 Also, I'll just tell you, when you go back, I
22 would recommend you go ahead and make your lunch orders. The
23 Court will -- now that you'll be deliberating, the Court is
24 allowed to furnish your lunch. So I would make my lunch --
25 select your lunch -- make your lunch selections so we can get

1 it and get it back here so you can enjoy it while you
2 continue your deliberations. So with that, we'll hear from
3 the plaintiff.

4 MR. MILLER: Mr. Nordholm saw an opportunity to
5 take advantage of my client.

6 THE COURT: Okay. I'm going to interrupt you and
7 tell you to turn on your microphone so we can hear you.

8 MR. MILLER: It is on, Your Honor.

9 THE COURT: Okay. I would bring it up to your
10 mouth a little bit closer.

11 MR. MILLER: How about now?

12 THE COURT: Much better.

13 MR. MILLER: Sorry. That robbed us of the drama.

14 Mr. Nordholm saw an opportunity and took advantage
15 of Mr. Jarrett. Although none of us would see one of our
16 friends passed out drunk, go through his pockets and steal
17 his wallet, that's what happened here. When we started this
18 jury -- ladies and gentlemen of the jury, when we started
19 this trial three weeks ago, I told you three things. One,
20 Anthem had a problem. That problem was Mr. Nordholm, who is
21 not here today. We proved that Mr. Nordholm was the problem.

22 THE COURT: Okay. Previously I had instructed the
23 lawyers make no reference to that.

24 MR. MILLER: I'm sorry.

25 THE COURT: So you -- Mr. Nordholm not being here

1 today is not something you should consider. The fact of the
2 matter is that Anthem does have a corporate representative
3 that's been here throughout the entire trial. Go ahead.

4 MR. MILLER: I told you that the Court had -- or I
5 told you that Anthem had three problems. The first was
6 Mr. Nordholm. We proved that Mr. Nordholm was the problem.
7 He sat right there and told you all about it. The second was
8 we showed that Anthem had no one with experience.
9 Mr. Nordholm had zero experience. We proved, in
10 Mr. Nordholm's own words, that he had zero experience. We
11 know that because he sat right there and told you all about
12 it. Three, I told you that Anthem was hemorrhaging money.
13 Mr. Nordholm, as we proved through his own words, said that
14 Anthem was grossly over budget and hemorrhaging money. We
15 know that because he sat right there and told you all about
16 it. Everything I told you during that opening three weeks
17 ago we have proved. Let's walk through the timeline, the
18 testimony, and the documents to show that, yes, Anthem is
19 liable to my clients.

20 When we began this trial, I told you Mr. Nordholm
21 saw Mr. Jarrett and his company as a fast and easy solution
22 to his problem. We proved that was true. We proved
23 Mr. Nordholm intended to solve his lack of experience and
24 money problems by begging Mr. Jarrett to help him and
25 promised a merger. I told you about Mr. Jarrett's vast

1 experience. We proved that Mr. Jarrett is a lauded member of
2 the WWE professional wrestling hall of fame, alongside the
3 most famous wrestlers and entertainers in the industry.
4 Mr. Jarrett testified that he has testified that he has over
5 three decades in the professional wrestling industry,
6 beginning with his first match in 1986.

7 Mr. Jarrett has wrestled under his real name, Jeff
8 Jarrett, since he entered the industry in 1986 including the
9 most recent Royal Rumble for the WWE in 2019. He has founded
10 three separate wrestling entertainment companies. First, he
11 founded TNA Entertainment, after which, you heard him
12 testify, that in 2014 went into such a decline -- that
13 Mr. Nordholm testified they foreclosed upon it and now Anthem
14 has the assets. Second, we showed that Mr. Jarrett formed
15 Global Force Entertainment, Inc. That is one of the
16 plaintiffs in this case, along with Mr. Jarrett. Third, we
17 showed that Mr. Jarrett formed Global Force Wrestling, LLC,
18 of which he owned 100 percent of all membership interest in
19 that company, and completely controlled every action of that
20 company. That company was an intellectual property, a
21 trademark holding company, through which Anthem Force
22 Entertainment used the marks and after the registration
23 issued for Global Force Wrestling the marks were assigned to
24 Global Force Entertainment.

25 Mr. Nordholm testified Mr. Jarrett used his vast

1 experience to improve Anthem's story lines, even in the short
2 time he was there. I told you that Amped was a big
3 investment and Mr. Nordholm knew access to it would save him
4 a lot of money. You heard Mr. Jarrett and Mr. Myers testify
5 that Global spent important time, money, and favors creating
6 Amped. Nobody disputes that the 16 one-hour episodes of
7 Amped were intended for a television series pilot. You heard
8 Mr. Jarrett tell you Global bet everything on Amped, and he
9 cashed in every favor, every favor he could. When we started
10 the trial, I told you Mr. Jarrett was shopping the *Amped*
11 content to some of the biggest media companies in the United
12 States. As you saw from the Arthur Smith contract, and heard
13 from Mr. Jarrett, he was not messing around. He was working
14 with a titan in the industry, the producer of American Ninja
15 Warrior and the Titan Games, that many of us saw last week on
16 NBC. He was shopping *Amped* to Viacom, Netflix and Fox, and
17 it was going well.

18 When Anthem first approached Mr. Jarrett, Global
19 had a hold agreement with Fox. Mr. Nordholm, however,
20 convinced Mr. Jarrett to stop shopping *Amped* and bring it to
21 Anthem.

22 You may have noticed that Mr. Nordholm and
23 Mr. D'Amore tried to testify that *Amped* was not important to
24 Anthem. We proved otherwise. We proved Mr. Nordholm wanted
25 the content so badly, as you can see above, that was he

1 willing to give Mr. Jarrett and the owners of Global Force
2 Entertainment an extra 26,881 shares of Anthem just to
3 include the 16 hours of Amped in the GFE brands. We know
4 that because he told his boss and executives that in this
5 3/15/2017 email. Why did Mr. Jarrett [sic] want the content?
6 He told you in 2017, when he approached Mr. Jarrett, Anthem
7 was, and I quote, grossly over budget. The production costs
8 were, in reality, based on his testimony, over \$100,000 per
9 hour of content. That means just to produce the 12 hours of
10 content would have cost Anthem \$1.2 million. The benefit of
11 saving \$1.2 million dollars was huge.

12 Anthem wants you to believe it could have replaced
13 the content for \$25,000 an hour. But they don't tell you how
14 they came to that number. Mr. Nordholm told you he left out
15 paying for talent. He told you he left out paying for
16 lighting. He told you he left out paying for everything else
17 involved in creating new content.

18 MS. MILLS: Your Honor, we're talking about
19 numbers. And we object to that.

20 THE COURT: Okay. Noted. This -- ladies and
21 gentlemen, this is closing argument. It is not evidence.
22 And I'll give you further instructions on that when I give
23 you the jury charge. Go ahead.

24 MR. MILLER: Mr. D'Amore was not any better,
25 because he told you he doesn't have any explanation either.

1 The cheap number that they put forward, I guess relatively
2 cheap number, is simply a fantasy. It's a made up number.

3 As you heard in Mr. Nordholm's testimony, Anthem's
4 cost to create was four times what Mr. Nordholm and what
5 Mr. D'Amore tried to tell you and is contrary to
6 Mr. Nordholm's testimony.

7 We proved that Anthem saved it a lot of money,
8 which was a massive benefit, and without which, they would
9 have been in even worse shape.

10 We also proved that Anthem wanted the content, but
11 also the GFE brands, too. Although Mr. Nordholm and his
12 executives testified the GFE brand wasn't worth anything,
13 that's very different than Mr. Nordholm's email to his boss
14 Mr. Asper. In his January 20th, 2017, email, right around
15 the time he sought out Mr. Jarrett, Mr. Nordholm admitted
16 that GFE had brand value that was hard to refute now that I
17 have been living it for a month.

18 Mr. Nordholm's claims using the content and
19 trademarks was not -- Mr. Nordholm claims the content and
20 trademarks was not contingent on the merger. This is wrong.
21 The term sheet tells the truth.

22 When Mr. Nordholm and Mr. Jarrett signed the term
23 sheet everyone was clear. We proved Anthem did not own the
24 *Amped* content until the merger happened. It did not have a
25 license to the trademarks until the merger happened. You can

1 see that in the term sheet where it says *Amped*, GFW *Amped*
2 will remain with GFE and be included in the merger, and
3 simultaneous to the closing of the GFE merger Anthem will
4 enter into a license agreement to use the names Global Force
5 Wrestling and *Amped* and related trademarks. You can see it
6 right there in the term sheet.

7 You also can see that Anthem's getting access to
8 the content and the license at the merger was not free.
9 Remember the email between the executives that we just showed
10 giving Mr. Jarrett and the owners of GFE 26,881 shares just
11 for the content and the brands? That's Exhibit 105. The
12 term sheet sets out the shares to be given to Mr. Jarrett.
13 And it was to be at the conclusion of the merger. And low
14 and behold, right there in the term sheet it gives
15 Mr. Jarrett the 26,881 shares effective upon the merger. You
16 can see it right there.

17 So, now, we have conclusively proven by
18 Mr. Jarrett's testimony, Mr. Nordholm's own email prior to
19 the term sheet, and the term sheet itself that Mr. Jarrett
20 was to receive a large number of shares in exchange for the
21 *Amped* content and trademarks effective upon the merger. The
22 merger never happened. Anthem's use of the *Amped* Anthology
23 and trademarks were contingent on the merger.

24 Despite the merger not happening, you saw from
25 Mr. Jarrett holding up the DVD, which he did right there --

1 in fact, he held up all four of them -- that the covers --
2 the back covers Anthem claims it owns the *Amped* and GFE's
3 trademark anywhere. You don't have to take my word for it.
4 All you have to do is look at the back of those four boxes
5 that are exhibits for you to view.

6 You heard Mr. Nordholm testify Anthem cut down the
7 16 hours of *Amped* content into four three-hour pay per views.
8 They called it the Amped Anthology. Not only did Anthem save
9 a bunch of money, the Amped Anthology saved it from breaching
10 contracts. We proved Anthem used the Amped Anthology to meet
11 its international contracts and pay per view needs.
12 Mr. Nordholm told you that without the Amped Anthology Anthem
13 would have breached its international distribution
14 agreements. That's what he said.

15 Yet, unbelievably, despite all the money saved,
16 and the contracts they saved from breaching, Mr. Nordholm
17 told you the quality of GFE's *Amped* was no good. And both he
18 and Mr. Nordholm told you that the Amped Anthology could have
19 been replaced with cheaper shows.

20 Here's what's shocking to me, and I am sure it is
21 shocking to you. Remember when you realized that
22 Mr. Nordholm and Mr. D'Amore hadn't watched the GFE's *Amped*
23 or their own Amped Anthology? With all Mr. Nordholm's
24 testimony and Mr. D'Amore with all his swagger, they didn't
25 view it. How do we know that? They told you that. They sat

1 right there and they told you that. Yet without seeing
2 either *Amped*, the Amped Anthology or the GFE *Amped*, they
3 claimed that their Saturday matinee content was better. We
4 all know that that wasn't true and they have no facts to
5 prove that.

6 Now let's talk about the license. There was a lot
7 of testimony regarding this alleged license. If you could
8 talk to me, you would probably say, what license? And I
9 would say, exactly. There was no license.

10 There was no license because there was no merger.
11 It never happened. As I told you when we started the trial,
12 the merger died when they suspended Mr. Jarrett, not when
13 they sent the termination email. But you don't have to take
14 my word for that. All you need to do is look at what
15 Mr. Nordholm said to Mr. Jarrett and what he did to his
16 friend behind his back. That tells the true story.

17 Mr. Nordholm was not honest about his intent to
18 bring Mr. Jarrett back after the suspension. In the
19 suspension notice, Mr. Nordholm falsely said it is my
20 intention to complete the GFE transaction as outlined in our
21 binding term sheet. Mr. Nordholm showed his true intentions
22 just five days after the suspension. We proved he sent an
23 email to Mr. Nordholm [sic] discussing distracting --
24 Mr. Jarrett -- if Mr. Jarrett was coming back, there would no
25 excuse, as you can see right there in the second paragraph,

1 to plan for his extractions just five days after his
2 suspension.

3 Now, let's remember when you first saw
4 Mr. D'Amore's graphic email about the lack of b-a-l-l-s and
5 the blowing brains up during the opening moments of trial.
6 It's hard not to forget, isn't it?

7 Although Mr. D'Amore claims he was exaggerating.
8 He wasn't. He wanted Anthem to take advantage of
9 Mr. Jarrett. In his own words, he said in the email,
10 Mr. Jarrett doesn't have the b-a-l-l-s to sue and if was
11 stupid enough to, let him blow his brains and his wallet up
12 fighting. We can see in their emails Anthem intentionally
13 chose to go forward. Even though both of them told you
14 Mr. Jarrett was their friend, they didn't care about what
15 happened to their friend. Mr. Nordholm agreed with
16 Mr. D'Amore, and as the boss made the decision to take
17 advantage of his friend. If they really wanted Mr. Jarrett
18 back, there was no need to worry about the lawsuit. Then
19 Mr. Merchant sent the email where he instructed a subordinate
20 not to share a payroll projection with Anthem's Nashville
21 employees. Why didn't he want it shared with Nashville's
22 employees? Because it said to remove Mr. Jarrett from
23 payroll projections. They didn't want anyone to see the plan
24 and tell Mr. Jarrett about it. If Mr. Jarrett was coming
25 back, they would not have needed to hide the email and to

1 place "remove" next to Mr. Jarrett's name.

2 These emails prove that Anthem, Mr. Nordholm,
3 Mr. D'Amore knew Mr. Jarrett would never come back and the
4 merger was dead long before Mr. Nordholm sent the termination
5 email.

6 Mr. Jarrett's falling off the wagon in October
7 2017 was simply an excuse to cover up their plan. We further
8 proved that his falling off the wagon was a false pretext for
9 firing him. You heard from Mr. Lunberger that he couldn't
10 remember ck whether he had been intoxicated while working
11 and/or on screen. We all know his lack of memory was really
12 a yes. He didn't want to admit to being drunk on camera.
13 His boss, after all, was sitting right there. Despite being
14 intoxicated on camera, Mr. Lunberger is still employed. They
15 even had him sit before you, right there, and testify on
16 behalf of Anthem. However, Mr. Jarrett was fired, allegedly,
17 for being intoxicated at a small independent wrestling event
18 in a roadhouse like bar in Calgary that was not even being
19 broadcast on television. This is not an excuse for
20 Mr. Jarrett being intoxicated, but it simply shows Anthem's
21 true intentions.

22 Now, let's talk about Anthem's defenses. No one
23 here truly disputes that Mr. Jarrett was owed something. You
24 saw in the termination email that Mr. Nordholm admitted that.
25 The single reason, the only reason, we are here is because

1 Anthem thought it could get a free pass by publicly dragging
2 my client through the mud for all to see. And second, to
3 claim that his actions gave them a free and forever license.
4 Think about that: A free and forever license to use the
5 *Amped* content and trademarks.

6 Even after over 800 days sober they continue
7 kicking Mr. Jarrett as he tries to get up and rebuild his
8 life and his company. By continuing to distribute the *Amped*
9 content Anthem has been pretending the merger happened. Even
10 Mr. Nordholm -- even after Mr. Nordholm told you the merger
11 was dead they willfully kept going. You can see it from the
12 DVD boxes created months after Mr. Jarrett left that were in
13 total control and authority of Mr. Nordholm. That tells the
14 world that Anthem owns all of the content and all of the
15 trademarks. There's no carve out. There's no mention of
16 Mr. Jarrett or Global Force Entertainment. There's no reason
17 for a consumer to think otherwise but to look at the back of
18 that box and believe that Anthem owns all of the content
19 every moment and every trademark on that DVD.

20 Anthem claims it has a free license to the *Amped*
21 content, the trademarks and Mr. Jarrett's name and likeness.
22 Again, free and forever. Free and forever.

23 Without the merger, there was no forever license.
24 But you saw from Mr. Jarrett's suspension letter and the
25 termination email and heard from Mr. Nordholm, Anthem knows

1 it owes Mr. Jarrett money. He even admitted in the
2 termination email that Anthem owed money for GFE's content
3 that has been broadcast. We proved through Mr. Nordholm and
4 Mr. Asper's words they paid him nothing. They simply kept
5 going. Even today they have paid him nothing.

6 Despite Mr. Nordholm's emotional breakdown over
7 losing his drinking buddy and friend, he never showed that
8 emotional concern before he got here. If he had, he would
9 have done the right thing and paid his friend.

10 THE COURT: All right. Ladies and gentlemen, I'll
11 have you step out, please.

12 MR. MILLER: What did I do wrong?

13 (Jury not present.)

14 THE COURT: Just hold them in the hallway there.

15 All right. Be seated.

16 Mr. Miller, you've gone too far. This is on
17 liability only. I gave you some leeway, but now you're
18 continuing to come back to the issue of what money is due.
19 Repeatedly. Now, either I can clean it up or you can clean
20 it up, but it needs to be cleaned up.

21 MR. MILLER: Your Honor, I'm --

22 THE COURT: We're only on liability. So there's
23 no need for your continued argument about what money is due.
24 It's just not.

25 MR. MILLER: Your Honor, I -- I'm not sure how

1 they can say that there is an agreement and a license --

2 THE COURT: But we're not on the issue of what
3 money is due.

4 MR. MILLER: I won't use the word free and forever
5 again. I won't use the word --

6 THE COURT: But you already have. So I need --
7 how are you going to clean it up so I can bless it?

8 MR. MILLER: (Inaudible.)

9 (Reporter interruption for clarification.)

10 THE COURT: Turn your mic on.

11 MR. MILLER: It is on.

12 I think we can fairly say that they're going to
13 claim there is an agreement --

14 THE COURT: That is not my question.

15 MR. MILLER: I just won't -- I won't talk about
16 the money any more, Your Honor.

17 THE COURT: And how are we going to clean up what
18 you've already said? How do you want to clean it up?

19 MR. MILLER: I will tell them that they shouldn't
20 consider me saying it's free. I'm willing to take that fall
21 on the sword. And I won't talk about money any more.

22 I disagree, Your Honor, that it is about a money
23 issue in saying that it is free and that they didn't pay him.
24 That came out during the evidence in the liability portion of
25 this trial. So did the money. So did the 25,000.

1 THE COURT: And I allowed that in. But you're not
2 in the -- you're not in the damages phase now. And you're
3 specifically and over and over again asking the jury to make
4 a decision on liability because they're due something. We're
5 here only on the theories that you've put forth and whether
6 or not any of those theories have been established by
7 preponderance of the evidence.

8 MR. MILLER: Your Honor, whether it is free
9 absolutely goes to the theory. They're saying that there is --

10 THE COURT: Whether it's free, Mr. Miller, is not
11 an element anywhere in my jury charge. So it's no reason for
12 you to talk about it. Now, what do you propose to say?

13 MR. MILLER: Your Honor, I'll apologize to the
14 jury for bringing that up.

15 THE COURT: I'm not sure that's what I want.

16 MR. MILLER: Please, Your Honor, tell me what --

17 THE COURT: Their sympathy for you and what you've
18 said, I'll tell them later, is not a point here.

19 What do you suggest, Ms. Mills.

20 MS. MILLS: Your Honor, I feel like it goes beyond
21 just that free and forever license. He talked about \$1.2
22 million and valuations of the content and all of this stuff.
23 And out of respect, I wasn't objecting each time, but there
24 were numerous places where he went beyond what we're supposed
25 to talk about. I feel like the Court needs to clear it up.

1 I don't think Mr. Miller's -- is going to do it to the extent
2 it needs to be done.

3 MR. MILLER: Your Honor, as an element of the
4 claims in your jury instructions, I have to prove damage. We
5 have proven damage by them saving money. That's the benefit
6 they got.

7 THE COURT: You need to prove liability. We're
8 going to have a separate phrase on damages and what's
9 appropriate there --

10 (Overlapping speech.)

11 MR. MILLER: If we don't --

12 THE COURT: -- jury comes back.

13 MR. MILLER: If we don't have to show that there
14 was any harm to my clients --

15 THE COURT: You've done that on the -- now, I
16 allowed that on the unfair competition claim. And you've
17 made that point using the language I think I suggested, that
18 they received a benefit. But now you've quantified the
19 benefit. And that went too far.

20 MR. MILLER: Your Honor, there was no objection to
21 that testimony coming in during the liability phase and it
22 came in.

23 THE COURT: Right. But we're only on the
24 liability phase here for argument. So what I want you to say
25 is that -- first, no more reference, under any of your

1 theories, anything regarding money. We've had enough of
2 that. Two -- I think you need so say words to the effect
3 that your reference to damages or money in this case is
4 premature because you anticipate the Court to ask each of you
5 to make a decision on the various theories of liability that
6 Mr. Jarrett presents.

7 MR. MILLER: I'm sorry, Your Honor --

8 THE COURT: On the various theories of liability,
9 on his several claims, on his multiple claims of liability.
10 And by referencing anything having to do with money puts the
11 cart before the horse. And you can phrase that however you
12 want. But you need to come back and argue liability. Have
13 you established by preponderance of the evidence any of the
14 claims establish liability.

15 MS. MILLS: Your Honor, I feel like if he says it
16 was premature that sends a signal to the jury that, oh, just
17 wait, you're going to get to decide that. I think it should
18 be less --

19 THE COURT: Go ahead.

20 MS. MILLS: I think that's -- that it should be I
21 talked about numbers and that was inappropriate. I'm sorry.

22 MR. MILLER: I don't think I should have to
23 apologize, Your Honor.

24 THE COURT: Well, you've heard what I've said.
25 How are you going to say it?

1 MR. MILLER: Your Honor, I want to be clear with
2 the jury that I'm sticking only to liability. And I will say
3 to the jury from this point forward I am only going to stick
4 to the liability questions. I'm not going to talk about --

5 THE COURT: Well, they don't know what liability
6 means. You're assuming they're lawyers. They're not.

7 All right. Just have them hold in the hallway.

8 MR. MILLER: I don't. . .

9 Sorry?

10 (Recess.)

11 THE COURT: Okay. I'm going to tell the jury that
12 after arguments I'll give them instructions and you will
13 learn that the only issue before you is the issue of
14 liability. You're not to be concerned with anything
15 regarding what either party -- because there are
16 counterclaims, may or may not be due. You have to follow
17 those instructions, whether you agree with them or not. And
18 to the extent the lawyers have talked about anything other
19 than liability, then that's not -- that is not something you
20 should consider. Any objections to that, Mr. Miller?

21 MR. MILLER: Your Honor, we'll abide by your
22 ruling, but I believe we are entitled to put on the proof
23 that is in the liability stage, and this goes to liability,
24 but I will abide by your instruction.

25 MS. MILLS: Your Honor, we'll abide by that. I

1 feel like it's not enough, but I think at this point I don't
2 know what else we do. But we continue to register our
3 objections to that -- that closing.

4 THE COURT: Okay. Bring in the jury.
5 (Jury present.)

6 THE COURT: All right. Be seated.

7 All right. Ladies and gentlemen of the jury, I
8 want to share with you that in the instructions that I'll
9 give you, you will learn that the case right now is only on
10 the claims of the plaintiff against the defendant and the
11 defendant's claims against the plaintiff. And that's the
12 decision that I'm going to ask you all to make. Whether or
13 not the plaintiff or the defendant may or may not be entitled
14 to anything depends on your decision that -- that I'll give
15 you on the first stage of the case. So, therefore, what the
16 lawyers are telling you now, first of all is, is not
17 evidence. You've heard all the evidence. And you'll be the
18 judges of how much weight to give to the evidence you've
19 heard. And I'll give you instructions that you can consider
20 all of it, some of it, or none of it at all. But what the
21 lawyers -- as I told you in the beginning say -- is not
22 evidence. So they may make reference during their closing to
23 things that are not at issue here at this point. And to that
24 extent you have to follow the instructions that I'll give
25 you, as I told you when you were selected, whether you agree

1 with those instructions or not. So with that, Mr. Miller,
2 you have a few minutes left.

3 MR. MILLER: Thank you, Your Honor. I believe
4 about 20 minutes. Is that correct?

5 THE COURT: You can proceed, Mr. Miller.

6 MR. MILLER: Thank you, Your Honor.

7 Dispute Mr. Nordholm's emotional breakdown over
8 losing his friend, he never showed that emotional concern
9 before he got here. If he had, he would have done the right
10 thing for his friend. All he cared about was solving his
11 problem while taking advantage of Mr. Jarrett's problem.
12 Commonsense tells us you that the license alleged here is a
13 fiction. The Mr. Jarrett testified that any right to use the
14 content or the trademarks required the merger to happen.
15 This is consistent with the term sheet. This is clear from
16 Mr. Nordholm's testimony that Anthem owed Mr. Jarrett
17 something. Now, you may have heard a lot of things that
18 Mr. Jarrett did or said. Mr. Jarrett told you this upfront,
19 and said he did incredibly stupid things. He doesn't dispute
20 that. Mr. Jarrett told you that he was very regretful for
21 those things. And you saw how his wife Karen Jarrett sat
22 through this trial during that difficult testimony. His
23 profound remorse is obvious. He sought treatment and has
24 attempted to make amends. Regardless of Mr. Jarrett's
25 problems there's no excuse to steal his content and his

1 trademarks. As I said before, none of us would see a friend
2 passed out drunk, go through his pockets and take out his
3 wallet. Even -- we wouldn't even do that to a stranger.

4 Even after Mr. Jarrett entered rehab, Mr. Nordholm
5 had total control, dispute what they allege that Mr. Jarrett
6 had control of, which we obviously dispute from Mr. Jarrett's
7 testimony, Mr. Nordholm unequivocally told you he had total
8 control after the suspension.

9 Even though Anthem told you in the termination
10 letter that they would talk about something later, they aired
11 Part 4 -- Part 2, Part 3 and Part 4 of the Amped Anthology on
12 pay per view. They gave the Amped Anthology to Fight Network
13 to broadcast throughout the world. They made the Amped
14 Anthology available for streaming on Global Wrestling
15 Network. Their only excuse is that Mr. Jarrett and Mr. Myers
16 never told them to stop. Even though Anthem it was doing
17 something wrong, they never told them to stop doing something
18 that was wrong. You heard Mr. Jarrett and Mr. Myers tell you
19 that they never dreamed Anthem would keep going because the
20 merger had never happened. They didn't need to be told
21 because they knew it. You saw Mr. D'Amore's email.
22 Mr. Nordholm told you he had the ultimate authority to make
23 that final decision. Mr. Nordholm and Anthem simply kept
24 going with the content and trademarks.

25 Finally, and unbelievably, you heard Anthem's

1 witnesses testify they intended to manufacture and sell a
2 Jeff Jarrett toy action figure. If all the bad things are
3 true about Mr. Jarrett and it was so bad that they had to
4 terminate him, you have to wonder why they plan to sell toys
5 with his name and likeness to children.

6 Now, let's walk through the claims you will see in
7 the verdict form. I know it will seem like a lot of
8 questions. My clients have 11 claims. The reason we have so
9 many claims is my client's suffered a lot of harm. But the
10 good news is you can check "yes" to all of my client's claims
11 and no to defendant's four counter claims. There is a simple
12 way to breakdown the counterclaims -- or breakdown the
13 claims.

14 First, look at the trademark and unfair
15 competition claims. The federal trademark infringement
16 counterfeiting claims are only for the Global Force Wrestling
17 trademark. The rest of the counter -- the rest of the
18 trademark and unfair competition claims have to do with the
19 GFW, Global Force Wrestling, and the two related logos. All
20 the trademark and unfair competition claims will have similar
21 elements. The Court will instruct you on those elements.
22 But pay particular attention to these two facts. One,
23 Anthem's DVDs state on the back that the marks and content
24 belong exclusively to Anthem, and how it would be impossible
25 for a consumer not to be confused by that statement, coupled

1 with the Global Force Wrestling and GFW marks all over the
2 content and promotions. The GWN, the Global Force -- or the
3 Global Wrestling Network and GFW marks and logos are nearly
4 identical and are in the same fields for the same consumers.
5 These facts tell you that, yes, Anthem is liable for
6 trademark infringement and unfair competition and
7 counterfeiting to my clients. Second, Global's claim for
8 violation of the Tennessee Consumer Protection Act is based
9 on two actions. First, yes, Anthem's DVD covers, as we told
10 you, say -- say that Anthem owns every moment of the content
11 and trademarks. This is clearly deceptive. Yes, Anthem uses
12 the Global trademarks on the packaging and they are nearly
13 identical to the network. Third -- and this is a really big
14 one for you -- we assert that, yes, defendants have benefited
15 from the use of Global's content and trademarks. Defendants
16 should account for all the wrongful benefits they received.
17 Fourth, yes, Anthem stole, used and destroyed the *Amped*
18 content. These intentional acts prove that Global -- and you
19 should find for Global and against Anthem for conversion.
20 You also should check yes for negligence, because it was
21 reckless, willful, and intelligent -- or intentional.

22 They knew they had the property. They knew had to
23 maintain the content in the original masters. They had an
24 opportunity not to delete that. They could have paid for
25 more storage. They chose not to. Fifth, you should find in

1 favor of Mr. Jarrett for his privacy claim. It is clear they
2 are using his name, image and likeness without a license.
3 And the only place you should check no on our claims is the
4 notion that Anthem engages in sports broadcast. We saw --
5 Mr. Nordholm, Mr. Jarrett, Mr. D'Amore testify that it is
6 scripted and predetermined. Everything there is scripted and
7 predetermined. It is not as if you are on a field of play
8 and no one knows who is going to win. The only person you
9 saw testify that it was a sport was Mr. Lunberger, and I've
10 explained to you why we can't trust his testimony.

11 Finally, you should find for my clients on
12 cancellation and registration of the Jeff Jarrett mark.
13 There was fraud on the front end. TNA, Anthem's predecessor,
14 knew that Mr. Jarrett had always wrestled under Jeff Jarrett.
15 They knew they were not the exclusive user of it. They were
16 not even the exclusive user of it when they filed the
17 application. They knew that. It was an intent to deceive to
18 get the registration.

19 On the back end there was abandonment. You heard
20 Mr. Brewer, the trademark attorney for Anthem, testify that
21 Class 41 is for marks in the entertainment industry. It's
22 not nor DVDs and digital media. Mr. Jarrett has no intent to
23 wrestle for Anthem. Anthem has no intent to hire Mr. Jarrett
24 to wrestle. It simply is inapplicable. They have abandoned
25 the mark. When it comes to the two counterclaims -- let's

1 cover those briefly. First, they have not shown that
2 Mr. Jarrett breached any duty. He acted in good faith. He
3 improved the content. He did the best he could, given his
4 situation. How Anthem can now claim he breached some duty as
5 an officer simply doesn't make sense. Their unjust
6 enrichment claim fails, too. Mr. Jarrett wasn't -- wasn't --
7 Mr. Jarrett didn't owe the \$40,000 to Mr. Sullivan himself.
8 That was related to Global Force Entertainment. The \$40,000
9 didn't benefit Global. Nobody can really explain that but
10 Mr. Nordholm, and he can't explain it. They simply used it
11 for their benefit voluntarily.

12 Finally, Mr. Nordholm saw an opportunity. And
13 again took advantage of Mr. Jarrett. None of us would see
14 that friend and take his wallet. Realizing what he had done,
15 Mr. Nordholm and Mr. D'Amore knew Anthem might get sued.
16 They bet Mr. Jarrett didn't have the courage to fight for the
17 most valuable assets of Global. Even knowing the merger was
18 dead and there was no license, at the time this started, and
19 certainly when Mr. Jarrett was suspended, Mr. Nordholm went
20 forward with the pay per views, international distribution,
21 streaming and DVDs. He did knowing it was wrong. You have
22 the opportunity to right this wrong. You have the
23 opportunity to tell Mr. Nordholm, Mr. D'Amore, and their
24 cronies that it's not okay to do this. Unfortunately, for
25 Mr. Nordholm, his friend, Mr. Jarrett, despite his problems,

1 had the courage to stand up to Mr. Nordholm, Mr. D'Amore and
2 Anthem. In a nutshell, there is no defense to their actions.
3 There is no license. There was no merger.

4 And so here we are.

5 THE COURT: All right. Ms. Mills.

6 MS. MILLS: Ladies and gentlemen of the jury, I'd
7 like to thank you so much for your patience and listening to
8 this and helping us sort out these problems. I know that
9 it's been a long time that you've been involved in this, and
10 we really appreciate it.

11 THE COURT: Is your mic on.

12 MS. MILLS: Is that better?

13 THE COURT: Yes.

14 MR. MILLER: Your Honor, we object. These
15 demonstratives were never shown to us before this.

16 MS. MILLS: This is not a demonstrative.

17 THE COURT: It's closing argument. Go ahead.

18 MS. MILLS: I -- as I've watched you folks listen
19 and sort through this this week, I would -- for myself, I
20 would have had the question, what exactly is this case about?
21 And -- so that's the ultimate question. What is this case
22 about, and what are you going to be asked to decide? So the
23 question here is did Mr. Jarrett -- when Mr. Jarrett did the
24 following four things while he was making \$250,000 a year as
25 Anthem's Chief Creative Officer -- he's the big cheese, the

1 guy in charge of all decisions about what the company puts
2 out, what it looks like, what trademarks are used, how we
3 market it. He's the guy. And he's being paid a lot of money
4 to do that. And so the evidence showed -- and it's really
5 undisputed -- that Mr. Jarrett used GFE's *Amped* content to
6 create the Amped Anthology pay per view. He used his own
7 image and likeness inside that *Amped* content that was
8 included in the pay per view. He used the trademarks GFW and
9 Global Force Entertainment in connection with Anthem's marks
10 and IMPACT marks, put all those marks on the same product.
11 And they did that on certain of Anthem's content and the DVDs
12 that you've heard a lot about. And Mr. Jarrett admitted that
13 he is the one who selected the mark Global Wrestling Network.
14 And he is the one who designed it to look like his other
15 marks for use on Anthem's streaming app. So that's pretty
16 much undisputed. And that's the conduct that 95 percent of
17 this case is about.

18 Now, GFE and Mr. Jarrett now claim that what he
19 did while he was employed for Anthem is wrong, and that he's
20 suing his employer over the very decisions he made while he
21 was being paid a lot of money to be Chief Creative Officer.

22 So in addition to the infringement related claims
23 that surround that conduct, there's a couple of other issues
24 that the plaintiff is asking you to decide. You're being
25 asked whether Anthem did anything wrong when it deleted the

1 raw footage from the *Amped* content after it had the final
2 broadcast version ready to go and safely preserved. The
3 evidence showed that everything that was in that raw footage
4 ended up in the final version. So there's a final version
5 and then there's an editable version left. The plaintiff
6 contends that that is wrongful and he's entitled to damages.
7 But that's one thing you're going to be asked to decide, is
8 did that harm anyone. And finally, whether Anthem abandoned
9 the Jeff Jarrett trademark that it rightfully owns.

10 So these claims and this conduct I've just gone
11 over amounts to questions -- the causes of action that it's
12 going to amount to is did Anthem commit infringement when it
13 used the *Amped* content, Mr. Jarrett's image and likeness, the
14 trademarks, all three of them that are at issue, Global Force
15 Entertainment, GFE, and Global Wrestling Network, was that
16 infringement. Two, was Anthem unjustly enriched. That's a
17 term of art and it's a type of cause of action. Was it
18 unjustly enriched when it used those things at Mr. Jarrett's
19 request? Did Anthem commit conversion, or was it negligent,
20 when those old footage files were deleted once it had the
21 final broadcast ready version? And has Anthem abandoned its
22 trademark for Jeff Jarrett? So those are the way the claims
23 are going to show up on your verdict form, using that
24 terminology. The answer to all of those questions is no.

25 Mr. Jarrett's theories were not supported by the

1 evidence in this case. Mr. Jarrett's claim is that Anthem
2 lured him in to the company and promised him a merger that it
3 never intended to do, and all for the purpose of taking his
4 intellectual property and then kicking him to the curb once
5 it had that. And that is not at all what happened. And you
6 heard that from the stand as you sat here and watched this
7 case.

8 Here's what really happened. Mr. Jarrett had been
9 kicked out of the previous company, TNA Entertainment, and he
10 had a beef with the previous owner, and coming back in to
11 Anthem after my client acquired it was a big deal for him.
12 He was going to be back on top and he was going to be in
13 charge and he was determined to be in charge and he was going
14 to show those folks before that he was back and he was a
15 force to be reckoned with. But his own conduct destroyed any
16 possibility of the merger. Now, Mr. Miller likes to minimize
17 his conduct. But you heard, ladies and gentlemen, witness
18 after witness tell you that Mr. Jarrett was frequently drunk
19 at work; Mr. Jarrett was frequently abusive to employees;
20 that he ruled with an iron fist; that it was his way or the
21 highway. He exposed himself to employees on more than one
22 occasion. He beat an employee with his belt. He shoved an
23 important business executive at an important event because he
24 lost his temper while drinking. He appeared on behalf -- he
25 appeared at a wrestling event to wrestle, completely drunk,

1 and didn't show back up. This is not conduct that can be
2 minimized. This is such serious conduct -- and I think we
3 all know if we were in the workplace and somebody -- or the
4 big boss -- the chief creative officer was behaving this way,
5 it's a serious, serious problem. So -- and that's why the
6 merger didn't go through. I think it's pretty obvious that
7 if you've got a party you're getting ready to merge with and
8 this kind of conduct is going on, it would make anyone think
9 twice about merging and whether or not that's a possibility.

10 So you did hear some of the emotion on Anthem's
11 side of the case. You heard Mr. -- Mr. D'Amore, who -- I
12 want to be sure that everyone gets this -- Mr. D'Amore is an
13 owner in the plaintiff. Mr. D'Amore owns 5 percent of the
14 company. He stands to gain if the plaintiff wins. Okay?
15 Because he would get some portion of that judgment.
16 Nonetheless --

17 MR. MILLER: Objection, Your Honor. She can't --
18 brought in he gets some portion of it.

19 THE COURT: Sustained. Just move on.

20 MS. MILLS: Nonetheless, he is here testifying for
21 Anthem. That should give you some idea of which party you
22 ought to believe. He's testifying against his own
23 self-interest in supporting Anthem's case. He had been a
24 long-time friend of Mr. Jarrett. They had worked together
25 for years. And Mr. -- Mr. D'Amore had finally had enough.

1 He testified that he had cleaned up these messes long enough.
2 He had seen this conduct and he couldn't take it any more and
3 he was ready to quit. And then Mr. Nordholm talked him in to
4 staying once they were going to put Mr. Jarrett on leave and
5 get some help. And -- and the question came up to
6 Mr. D'Amore what do we do if he says we can't use all this
7 content that he has forced us to use. And Mr. D'Amore said,
8 with some emotion, I can't believe he would be -- he would do
9 that. That would be so unfair and so unreasonable after
10 putting us on this path that I don't believe he's going to do
11 that. And that's the emotion you heard coming from
12 Mr. D'Amore. You also heard a lot of emotion coming from
13 Mr. Nordholm. Mr. Nordholm told you that he considered
14 Mr. Jarrett a dear friend. They had spent more time together
15 building -- trying to build this company back and put these
16 fires out and turn it back to its former glory -- he had
17 spent more time doing that than he had with his own family.
18 And he also felt betrayed when Mr. Jarrett turned around and
19 made these outrageous claims that he's made.

20 Now -- so the real story is that it's not a
21 situation where you had your friend drunk and you're picking
22 his pockets. What happened is it's the drunk friend that you
23 have carried on your back and taken care of and tried to get
24 straightened out and tried to get help, turning around and
25 holding you up for acts you did at their direction. That's

1 what's going on here. And our clients saw his acts in
2 bringing these claims as a big betrayal of this friendship.

3 We've talked a little bit about the witnesses.
4 The plaintiff's witnesses that support his version of events
5 is really Mr. Jarrett. Mr. Jarrett told you, oh, I didn't
6 really control anything. That was really Mr. Nordholm. I --
7 you know, I just was there and then we had this other guy,
8 John Guboric ^ sp and he was in charge. That's not at all
9 true. And that's not what any other witness told you. You
10 heard from those witnesses. He was -- he was determined to
11 be in charge. He negotiated for that power and that control
12 and he got it. And Mr. Nordholm admits he doesn't know
13 anything about the wrestling business and wrestling content.
14 That's what he was hiring Mr. Jarrett for and paying him a
15 lot of money, to make those decisions. And Mr. Jarrett did
16 make those decisions.

17 So Kurt Myers was the other witness that was --
18 that was here to testify about the plaintiff's version of
19 events. Mr. Myers testified he wasn't really involved in the
20 negotiations so he doesn't know anything about that, but he
21 did tell you that he never, on behalf of Mr. Jarrett, revoked
22 the permission to use this stuff. And he didn't know -- as
23 far as he knows, the plaintiff, Mr. Jarrett, never did that.
24 The rest of these witnesses are all for Anthem. You heard
25 from Mr. Merchant, who is Anthem's financial officer. He

1 told -- told you that Mr. Jarrett was the operational lead on
2 the ground. He's the guy making decisions. He's the guy in
3 charge in Nashville. You heard from Mr. D'Amore. I've
4 already talked about that. Mr. D'Amore is a long-time
5 friend. He's the one who supplied the money to make the
6 *Amped* content. He's the one that would stand to benefit if
7 GFE were to win here. But he believes that Anthem is correct
8 in this case. We've talked about Mr. Nordholm relying on
9 Mr. Jarrett, believing they were friends, looking to him to
10 help save this company, and getting a knife in its back after
11 Mr. Jarrett got sober. You heard from Mr. Matthews, who said
12 Mr. Jarrett ruled with an iron fist. It was his way or the
13 highway. Many employees wanted to leave. He berated
14 employees publicly. He was drunk on the job. You heard all
15 of that from the witnesses. So Anthem is not liable for
16 infringement for three primary reasons. Number one, Anthem
17 had a license or permission to do everything it did. Two,
18 there's no likelihood of confusion caused by Anthem's use of
19 this intellectual property. And, three, the plaintiff's
20 trademark registration, the federal registration is not
21 valid.

22 So Anthem is not liable for infringement because
23 it had a license. And a license is a term of art in the
24 intellectual property world, which is basically permission.
25 It's a contract that gives permission to use the intellectual

1 property. And a license -- because Mr. Jarrett gave his
2 permission to use the IP about which he's now complaining, it
3 can't be an infringing use unless Anthem exceeded that
4 permission given.

5 So Mr. Jarrett knew exactly what he was doing
6 here. He is a sophisticated businessman with 30 years of
7 experience in the industry. He testified he was represented
8 by national counsel, Nelson & Mullins, during all the
9 negotiations. So he had his own -- access to his own
10 lawyers. He was Chief Creative Officer and he carefully
11 negotiated that role so that he could be in charge and have
12 control. He testified on cross-examination that he knew he
13 had the right to say no for the use of this IP. And he knew
14 he had the right to say no both before and after he was
15 terminated. And he testified he knew that there was a risk
16 that the merger would not go through when he agreed to let
17 the company -- or when he offered the company to use his
18 intellectual property. He testified that he authorized the
19 use of the trademarks that are at issue in this case. He
20 admitted that. He testified that he authorized the use of
21 the *Amped* content for use as a pay per view and everything
22 that that entailed. That would usually entail the DVD's, the
23 distribution to foreign licensees, all of that. He testified
24 he knew that was going to happen when he gave permission.
25 And he testified that he authorized the use of his own image

1 and likeness. He knew his image and likeness was in that
2 content, and he offered it up.

3 Now, when he offered that *Amped* content, that set
4 the company on a path that it could not deviate from.
5 Because there's -- the company has contractual obligations
6 to -- to give content to its licensees. If Mr. Jarrett had
7 not offered the *Amped* content, they would have -- they had a
8 filming session set up to film that content. Mr. Jarrett
9 said, oh, no, we don't need to do that. Let's cancel that
10 and let's use *Amped*. Once they cancelled that, there's no --
11 there's no going back because there's no content to take its
12 place. So it set the process in motion, once Mr. Jarrett
13 cancelled that filming.

14 So he testified that he helped select the marks
15 that he put on this content. He testified he chose the color
16 green to make it look like his other marks. He testified
17 that he knew when he gave permission to use this that it was
18 going to be used on everything, social media, the website,
19 DVDss, et cetera. He knew that. He testified that he
20 offered Anthem the right to use all of GFE's social media
21 accounts. He testified he knew he had the right to say no,
22 but he did not. He never withdrew his permission to use the
23 IP, both before and after he was terminated. Mr. Myers
24 testified he didn't withdraw the permission. And neither
25 plaintiff ever withdrew their permission until this lawsuit

1 was filed.

2 Now, these acts constitute a legally binding
3 license, or a contract for use. The license does not have to
4 be in writing. There is no requirement for that. It can be
5 oral. A license can be implied from the parties's actions.
6 And that's what's going on here. If somebody gives you the
7 intellectual property to use and says use this and they're
8 your boss and you use it, that is not -- that's an implied
9 license. They're telling you can use it. It's an agreement
10 to use it. The key question in determining if that happened
11 is whether Mr. Jarrett intended the intellectual property to
12 be used in the way that it was used. So if you find that
13 Mr. Jarrett granted a license, you can't find that Anthem is
14 liable for infringement unless Anthem exceeded that license.

15 Now, I should tell you, Judge Crenshaw is going to
16 instruct you on the law. And you should you are follow those
17 instructions. And you will follow those instructions. I'm
18 telling you, as argument, what I understand the law to be and
19 what we feel the law is. And they're completely in harmony
20 with these instructions you're going to receive.

21 And further, because GFE and Mr. Jarrett received
22 benefit from Anthem using this intellectual property, that
23 license is irrevocable. And that doesn't mean that Anthem
24 can take this intellectual property and do whatever it wants
25 to. That's not what it means that the license is

1 irrevocable. It just means that anything that Anthem has
2 done in conformance with these instructions and with what was
3 going to flow from those instructions can't be deemed
4 infringement after the fact. You can't tell somebody to do
5 something and then let them do it and then claim later, oh,
6 well, now that was wrongful. You can't do that. That's what
7 an implied license being irrevocable means.

8 Now, how do we know that Mr. Jarrett granted a
9 license to use this IP in the way it was used? He said so.
10 He told you he knew it was going to be used for streaming
11 content. He testified he knew it was going to be used on the
12 four pay per views. He testified he knew that it was going
13 to be used for DVDs, for foreign licensees, and he knew his
14 image and likeness was included. So that is a license.
15 That's exactly what an implied license is. His actions tell
16 us that Anthem had the right to do these things because he's
17 the one that did it, as the big boss.

18 Now, he admitted in a public filing that the very
19 uses he complains about now in this case were actually
20 licensed uses. You will see in your jury notebook, there's a
21 statement of use that was admitted in this case, in Anthem's
22 part of the case. A statement of use is a document that a
23 trademark owner has to file at the trademark office to show
24 they've actually used a mark and how they've used it. And
25 one they've used a mark, they can get a trademark

1 registration. This statement of use is the one that
2 Mr. Jarrett filed. And you'll see it in your notebook. And
3 he signs it. You can see his signature there at the bottom.
4 And what this thing swears under penalty of perjury is that
5 the uses that he's showing were done by a licensee. Now,
6 these are the uses he claims were done by a licensee.
7 There's the *Amped* DVD. And those arrows are pointing out for
8 you the IMPACT marks and the GFE marks. This is exactly what
9 this case is about, these uses. And this is what Mr. Jarrett
10 filed under penalty under perjury with the federal government
11 was done -- a licensed use done by a licensee.

12 He made this filing and swore this in March of
13 2018. This is months after -- six months, almost, after he
14 was terminated. So he believed he had licensed it, and he
15 knew that he had licensed it. And he's relying on Anthem's
16 use to get a trademark.

17 So now Mr. Jarrett says, well, okay, even if I
18 licensed it, it was contingent on the merger going through.
19 But Judge Crenshaw is going to instruct you that a license
20 can only be contingent if that -- if Mr. Jarrett expressed
21 that to Anthem in clear, unambiguous terms. So that was
22 never expressed to Anthem. That's what the testimony showed.
23 The term sheet doesn't say that the IP is contingent -- the
24 use of the IP is contingent on the merger. It doesn't
25 address it at all. Plaintiff tries to argue that it says

1 that Anthem can't use it. That's not what it says. It
2 doesn't address this issue at all. It doesn't prohibit Mr.
3 Jarrett from using the IP. Mr. Jarrett admitted that he knew
4 when he allowed the IP to be used there was a chance the
5 merge was not going to go through. He admitted he never told
6 anyone that his permission was contingent upon the merger
7 going through. He admitted that. And if you find that it
8 was even debatable whether he said that to someone, you must
9 find that the license wasn't contingent on the merger going
10 through. And this makes sense, folks, because if you've been
11 granted the right to use it, and you use it, it can't later,
12 after the fact, become infringement. If it was fine at the
13 time you did it, then it can't -- the license can't be
14 contingent upon the merger going through.

15 Secondly, all of those infringement claims should
16 be -- you should find in favor of Anthem because there's been
17 no likelihood of confusion. Mr. Jarrett admitted that he put
18 out -- he contributed and helped put out that press release
19 that announced the merger in advance. And he admitted that
20 the purpose of that press release was to make the consumers
21 believe that these parties were merging. That's why they did
22 it. And then he admitted that if consumers believed that the
23 parties were merging, they weren't confused. Because that's
24 what they were supposed to think. He admitted there was no
25 intent by Anthem to pass off its products as those belonging

1 to GFE or GFE products as belonging to Anthem, that he -- he
2 admitted that. There was no intent to do that. And he
3 admitted that this was just part of a cobranding effort to
4 make people believe that the parties had merged. Both sets
5 of marks were on these products. So no one was confused.
6 You heard testimony by Mr. D'Amore and Mr. Jarrett that
7 cobranding things in this industry is common and nobody is
8 confused by that.

9 So I also note that Mr. Jarrett did not bring any
10 witnesses in here to testify that they were confused.
11 There's no consumers that you heard from that said, oh, I
12 thought this was confusing and, you know, I almost bought one
13 product or the other because this was on there. We didn't
14 hear from anyone like that. Mr. Jarrett didn't bring any
15 survey experts or marketing experts or marketing data in here
16 that would show any confusion that anybody was confused.
17 Mr. Jarrett did not put on any evidence that Anthem intended
18 to pass off its products as GFE's. There's no evidence that
19 consumers viewed this as anything other than a cobranding
20 effort or that -- or that anything happened here other than a
21 failed merger.

22 So the third reason some of thee infringement
23 claims fail is because the federal registration that Mr.
24 Jarrett is relying on is invalid. The reason it's invalid is
25 because -- it's just a law, it's just a rule -- that the

1 owner of the mark has to file the trademark application. In
2 this case, an entity called Global Force Wrestling filed the
3 trademark application, not the plaintiff, Global Force
4 Entertainment. Because the owner did not file the trademark
5 registration, it was void at the beginning. It was just
6 wrong from the get-go, and it's not valid. Secondly, that
7 entity, Global Force Entertainment -- or Global Force
8 Wrestling was administratively dissolved in 2015. And what
9 that means is they didn't file what they were supposed to
10 file to keep that company active. Once that happens, and
11 it's administratively dissolved, it's a nonentity. It's a
12 nullity. It doesn't really exist in the eyes of the law any
13 more. So it can't perform acts that would have kept that
14 trademark valid. And that's what happened. They had to file
15 something, that statement of use that we were just talking
16 about earlier, but they filed it as a defunct company. And
17 because they were defunct, that statement of use is no good,
18 which makes the registrations no good as well.

19 Now, because they don't have a valid federal
20 registration, two of those claims, federal trademark
21 infringement and counterfeiting cannot proceed. You must
22 have a valid federal registration to even make those claims.
23 And because that registration was valid from the very get-go,
24 because the wrong company filed it, you must check, no, that
25 there's no federal trademark infringement or counterfeiting.

1 Likewise, Anthem isn't liable for conversion.
2 Conversion is the claim that arises from the idea that those
3 original files, the raw footage were deleted. Now, GFE can't
4 prove that -- the first element: Use in enjoying another's
5 property without the owner's consent. They can't prove that
6 because, as we've gone over, Anthem had Mr. Jarrett's consent
7 and GFE's consent. He told them to do it. He's the one who
8 caused it to be done. So they can't make meet first that
9 element. Second element, destruction of property of another
10 by excluding or defying the owner's rights. Here's there's
11 been no destruction of property because the content of those
12 files is incorporated in what still exists. There's a final
13 broadcast-ready version of it. It's even more valuable than
14 the raw footage. There's a version that's editable that can
15 be changed in any way that one would want to change it in.
16 So there's been no destruction or loss. And withholding of
17 personal property from the owner is another element. That
18 can't -- there's not even been an allegation that that
19 happened. And Mr. Jarrett has never asked for these final
20 broadcast-ready masters. So they can't meet that element.

21 Negligence. That's a claim arising from that same
22 issue of the deleting of the original files. To make out a
23 claim for negligence, they have to prove that Anthem owed GFE
24 a duty of care, Anthem fell below that duty of care, and that
25 caused loss or damage, and that Anthem's negligence was the

1 cause of that loss.

2 Now, Mr. D'Amore testified that it was completely
3 the normal course of business once you had that final
4 broadcast-ready version done, you deleted the original
5 footage. The reason for that is it costs a ton of money to
6 store these humongous graphics files. So once you've got it
7 ready and finished, you delete that raw footage. If you want
8 the raw footage to be maintained, you have to tell the
9 company that. And Mr. Jarrett knew that as -- and nobody
10 ever told Anthem, hey, you need to preserve this raw footage.
11 So there was no duty that Anthem had to preserve it because
12 no one ever told them to do it. And finally, because every
13 bit of that raw footage is incorporated into the final,
14 there's been no loss or damage there. There's -- so if you
15 can't make out a showing of any harm, you can't make out that
16 claim.

17 Unjust enrichment, that is the claim that GFE
18 bestowed some benefits on Anthem by allowing -- you know,
19 giving the intellectual property to be used, that Anthem
20 accepted those benefits, and that it was under circumstances
21 that would be inequitable or unjust. Now, as I've said,
22 Anthem strongly believes they have a license to do everything
23 they did because Mr. Jarrett gave them permission and told
24 them to do it. Not just gave them permission. He caused it
25 to be done. If you've got a license, you can't be liable for

1 unjust enrichment because that's a contract. And unjust
2 enrichment does not apply to -- to claims where you have a
3 contract. So because this license exists, there can be no
4 unjust enrichment. And finally, Anthem has not abandoned its
5 Jeff Jarrett trademark. Anthem has a valid registration. It
6 obtained it fair and square by paying for it. And it has
7 maintained it like it was supposed to and filed everything it
8 needed to file. And there's no evidence to the contrary.
9 The items that they had to file to maintain it are sworn
10 declarations that they are using it in the way that it has to
11 be used. There's no evidence to the contrary. And they
12 are -- they are currently out of toy action figures but there
13 was testimony from Mr. Matthews and Mr. D'Amore that they are
14 actively in conversations with toy makers to make a legend
15 series, one of which would be Mr. Jarrett. So they cannot
16 show that Anthem has abandoned use of that mark or that they
17 intend not to resume use of that mark. So if they can't show
18 that, they're not entitled to have that registration
19 cancelled.

20 Now, Anthem's counterclaims. Anthem is claiming
21 that Mr. Jarrett breached his duty -- his fiduciary duty and
22 his duty of loyalty.

23 Now, Mr. Miller claims that Mr. Jarrett acted in
24 good faith. Well, I just don't believe that we as people
25 that live and work in the -- in the business community

1 believe that an officer of the company can expose the company
2 to liability from employees by beating an employee with a
3 belt, exposing himself to employees, abusive behavior to
4 employees, exposing the company to liability from third
5 parties. He exposed himself to nonemployees in a bar. That
6 was what the testimony showed. He shoved an important
7 executive at an event. His substance abuse prevented him
8 from doing his job. He showed up drunk -- many times showed
9 up drunk at important meetings, showed up drunk at important
10 events. He caused -- he ran off employees -- or almost
11 did -- that would have left had he not gone on leave. He
12 exposed the company to terrible PR. So -- and if you were to
13 find that Mr. Jarrett didn't give a license, then all of
14 these things he did by letting -- by causing the company to
15 use IP that didn't belong to it, that's causes damage to the
16 company. So all of these items are -- this behavior is just
17 so appalling and egregious that it clearly caused harm to the
18 company and would have breached his duties of loyalty and
19 fiduciary duties to the company as an officer.

20 Now, an unjust enrichment, Anthem is claiming, and
21 the proof showed, that Anthem paid \$40,000 to obtain release
22 of this *Amped* content so it could be used. That's amounts
23 that reduced the debt that GFE owed. It's a benefit GFE
24 received. And Anthem believes it's entitled to be reimbursed
25 for that.

1 Now, you're going to be asked to complete the
2 verdict form. And it can be long and completed. And there
3 are a bunch of claims on there. And I just kind of want to
4 run through this verdict form very quickly. The first thing
5 on your verdict form is the Lanham Act claims. Those are the
6 trademark related claims under federal law.

7 So the verdict form is going to ask you on
8 Global's claims for trademark infringement under federal law,
9 as those elements are described in your jury instructions, do
10 you find that Global has proved infringement on the following
11 trademark? And it's the Global Force Wrestling mark. You're
12 going to check "no" there because of the reasons we've talked
13 about. One, you can't prove infringement if there was a
14 license because the conduct was done with permission. Two,
15 there's no likelihood of confusion. Three, that trademark
16 registration right there is invalid because the wrong party
17 filed it. And the company was defunct that filed the
18 maintenance documents. So it's invalid, which means they
19 cannot meet their burden on that claim.

20 Second, unfair competition. That's another
21 trademark infringement claim. It's basically -- a lot of
22 these things are basically the same thing. To succeed on
23 this claim, the plaintiff has got to show that the use was
24 without permission and that it caused a likelihood of
25 confusion. For the reasons we've talked about, you should

1 check "no" there because the use was done with permission,
2 with Mr. Jarrett's permission, and there's no likelihood of
3 confusion. Third, there's a claim in here for
4 counterfeiting. Now, counterfeiting is another of these
5 trademark claims that requires you to have a valid federal
6 trademark registration. And that's -- so they have to
7 show -- see that Global Force Wrestling U.S. trademark
8 registration number da, da, da, da. That registration has to
9 be valid before they can make out that claim. So for the
10 reasons I went over above, it's not valid, because the wrong
11 party filed it and the company was defunct when they filed
12 the maintenance documents. So they can't make out that claim
13 as a matter of law.

14 Then you're going on to get questions like this:
15 If you answered yes to any box of question 3, do you find
16 that Anthem's acts were willful, as that term is defined in
17 the instructions?

18 Now, you're going to skip this because you
19 answered no. You don't even have to deal with that. But if
20 you want to answer it, you can check no. And by willful, the
21 reason -- none of this conduct was willful or wrongful was
22 because Anthem believed it had the right to do it because the
23 plaintiff caused all this to happen and put it on this path
24 that they could not stop.

25 State trademark infringement claims, basically the

1 same standard. Is there a likelihood of confusion among
2 consumers caused by the use of these marks. And if it was
3 done with permission or pursuant to a license, you can't make
4 out that claim. So you're going to check no on all of those
5 marks because it was done by permission.

6 On 6, Global's claims for unfair competition under
7 Tennessee law. Again, that's another way of saying the same
8 thing. It's a trademark infringement claim. The plaintiff
9 would have to prove that there was a likelihood of confusion
10 and that the use was done without permission. Here, there's
11 a license. So it was done with permission. And there's no
12 likelihood of confusion. So you're going on to check all the
13 way up and down there. Check no.

14 All right. Number 7. Here we have another one of
15 these very similar claims. The Tennessee Consumer Protection
16 Act violation. That again requires that the use be done
17 without consent and that there was a likelihood of confusion
18 caused. Because there was a license and because there was no
19 likelihood of confusion, you're going to check no to that one
20 as well.

21 And again, you get another one of these questions,
22 well, if you answered that yes, do you find that it was
23 willful. If you answered no above, you don't even have to
24 address that.

25 And -- so an all of those that we just went

1 through, that whole bucket of claims are the infringement --
2 trademark infringement claims. And the license would
3 encompass all of those if you find that Mr. Jarrett granted a
4 license.

5 All right. This next claim is the unjust
6 enrichment claim. And for the reasons we went over there's
7 been no unjust enrichment. Because again there's a license.
8 And if you've got a contract, you can't have unjust
9 enrichment. That's just Tennessee law. You just can't make
10 it out. So because there's a license, you check no there.

11 Ten, on the claims for conversion, you're going to
12 check no there because there's been no destruction or
13 destroying of anything by the deletion of those 16 raw
14 footage files because that raw footage file -- that raw
15 footage is incorporated into what's left in a better more,
16 marketable way.

17 And again, you've got the question, hey, if you
18 answered yes to the one above, do you think it was willful.
19 So if you answered no, you don't even have -- you can just
20 skip that, you don't even have to answer it.

21 Negligence, arising from that same deletion of
22 those files. The reason there's no negligence is because
23 there was no duty to GFE. GFE never asked Anthem to preserve
24 those files. And so it wasn't foreseeable to Anthem that
25 this was going to be a problem. This is the way it was

1 always done. And besides, there's no damage because, again,
2 that final broadcast-ready master still exists, along with an
3 editable version of it. So there's no harm.

4 You're going to get another question, hey, if you
5 answered yes above, do you find that Anthem's conduct was
6 willful? If you answered no, you can skip that.

7 But again, if you do determine that you want to
8 check yes on one of these infringement claims, the
9 willfulness, that standard is extremely high. And given that
10 Anthem believes it has a license and was doing all this at
11 Mr. Jarrett's direction, it can't be willful.

12 THE COURT: You have five minutes left.

13 MS. MILLS: On Mr. Jarrett's claims under the
14 Tennessee Personal Rights Protection Act, that's the claim
15 where he's saying, hey, you used my image and likeness in the
16 *Amped* content. Again, that claim you should check no because
17 there was a license; it was done with permission. And -- so
18 there's no -- there's no cause of action there.

19 You're also going to be asked whether Anthem
20 Wrestling provides a sports broadcast. And the reason you're
21 asked that is that's an exception to that statute. You heard
22 from Mr. Matthews who told you that he's the one that's in
23 charge of Anthem's talent, their wrestlers. And there's
24 certain state laws -- certain laws -- certain states have all
25 these laws that apply to contact sports. And these states

1 include wrestling in those statues. You have to have a, you
2 know, medical professional on site and things like that.
3 Because those statues treat professional wrestling as a
4 sport, we assert it's a sport and it should be treated as
5 that for these purposes. So we would say do you find Anthem
6 Wrestling provides a sports broadcast? You should check yes.

7 16, did Anthem discontinue use of the Jeff Jarrett
8 mark? And the answer there is no. The testimony was we
9 continued to use it. We have filed the appropriate filings
10 that are sworn filings. And the registration is valid. And
11 we have a presumption that it's valid and that items are in
12 use. So you're going to check no there. Do you find that
13 Anthem failed to protect its rights with regard to Jeff
14 Jarrett's marks. There's absolutely no evidence of any kind
15 that Anthem didn't protect its rights with respect to the
16 Jeff Jarrett mark. So you're going to check no there again.

17 And finally, do you find that Anthem made a false
18 representation to the Patent and Trademark office in
19 connection with the application? First of all, Anthem didn't
20 even file the trademark. That was done years ago at TNA.
21 And there's zero evidence of any kind in this record that
22 TNA, much less Anthem, did anything fraudulent. And they
23 didn't. So you should you had check no here.

24 And 19, do you find that the federal registration
25 for the mark Jeff Jarrett should be canceled? And again,

1 because this registration is valid and existing and has been
2 maintained and is in use and there's no intent to abandon it,
3 you should check no.

4 On Anthem's breach of fiduciary duty and loyalty
5 counterclaims, we believe that Mr. Jarrett's conduct was so
6 egregious as an officer of the company that it did violate a
7 duty of loyalty and a duty of -- a fiduciary duty. So we
8 think he should check yes to 20 and 21. And on the claim of
9 unjust enrichment, where Anthem actually paid for the release
10 of this content so that it could be used and it reduced the
11 debts of Mr. Jarrett and GFE, the answer there is, yes,
12 Anthem is entitled to that -- Anthem has proved that claim.
13 And then you're going to sign it. And -- or the foreperson
14 will. So that's the last step.

15 We ask that you -- you folks -- and I know you
16 will -- use your commonsense and everything you've learned
17 and seen and watched and -- and the relative believability of
18 these witnesses. And we ask that you decide with your
19 commonsense what's fair. Is it reasonable to hire a person
20 and pay them \$250,000 to be in charge of something and they
21 come in and they -- let's suppose you hired somebody to be in
22 charge of your IT department, the website, and you bring this
23 person in and you're paying them a lot of money and they
24 happen to be a shutter bug and they like to take pictures an
25 and put their pictures all over your website, and then they

1 do some egregious conduct, some kind of egregious conduct
2 that gets themselves fired. Can they turn around and sue you
3 for using those pictures that they themselves put all over your
4 website? No. The reason they can't is because that's a
5 license. When they do it and they put it on there, they are
6 licensing that stuff for the way it's being used. And that
7 only makes sense. That's commonsense.

8 THE COURT: Ms. Mills, you've run out of time.

9 MS. MILLS: So we ask that you return a verdict in
10 favor of Anthem on all claims. Thank you.

11 THE COURT: All right. Mr. Miller, you've got 12
12 minutes.

13 MR. MILLER: Thank you, Your Honor.

14 Sometimes the things you hear and don't hear are
15 really important. Sometimes the things that you don't hear
16 are just as important as the things you do.

17 So you've heard today, several times -- I counted
18 at least five -- that the implied license is a contract.
19 It's an agreement. So on one side Anthem gets to use the
20 content and trademarks for whatever it wants for as long as
21 it wants, however it wants forever. On the other side, they
22 say there was no required merger on this side. Right? No
23 mention of that. They just say it's not right. So what's
24 not being said? What is Mr. Jarrett getting for this
25 contract? Where are the two sides here that are forming the

1 contract? They say there's an implied license that's a
2 binding agreement, you can't do unjust enrichment, you can't
3 get give it to us. But where is the contract? We all know
4 when you buy a car there's two sides to that contract. And
5 here, silence. What you also didn't hear when they said
6 there's no passing off is any explanation how anyone could
7 look at the back of that DVD box, any of the four, and think
8 anything but that Anthem owns the content and the trademarks.
9 That's what it says. There's no reason to believe otherwise.

10 When it comes to the cancellation and abandonment,
11 what didn't you hear? You didn't hear that they were going
12 to hire back Mr. Jarrett. How are they going to prove that
13 there is an entertainment service that's going on? They're
14 not going to hire him back. There was no mention of that.
15 You heard them reference to Mr. Jarrett as the big boss four
16 or five times. There's no mention of Mr. Nordholm's
17 testimony that he was responsible for branding, that he was
18 responsible, he was the ultimate big boss. There's really no
19 dispute to that. He testified right there to that.

20 You didn't hear -- you didn't hear any reason why
21 Mr. Jarrett wouldn't be entitled to a judgment in his favor.
22 It's just smoke and mirrors.

23 When it comes to the administrative dissolution,
24 what you didn't hear is law that you'll see on the jury
25 instructions. And I'm not here to instruct you on that.

1 That's His Honor's job.

2 You didn't hear that although Mr. D'Amore owns 5
3 percent of my client Global Force Entertainment, you didn't
4 hear how much he was getting paid when he took over the
5 position for Mr. Jarrett. You didn't hear how once the
6 cupboard was bare of the content, and the trademarks had been
7 used by someone else, how he picked a side. He picked the
8 side that was winning, the side that had taken the content.
9 And so because he was getting paid for that, it makes sense
10 why he switched sides. But you didn't hear that. You heard
11 that Mr. Jarrett was carried on the back of Mr. Nordholm and
12 the other employees. There was no explanation as to why he
13 was being carried on their backs, why his content and his
14 trademarks were taken. Did he tell them to take it because
15 you're carrying on the back, that we have an agreement? No,
16 you didn't hear that.

17 Ladies and gentlemen of the jury, I would be
18 remiss if I didn't thank you for the hard work that you've
19 done. You've been here a long time. And I trust that you'll
20 do a lot of hard work as we go forward.

21 We believe that the evidence is clear. We didn't
22 have any fancy power points. We just showed you the
23 evidence. The evidence shows you what you need. And you
24 have everything to find for my clients.

25 Thank you for your time.

1 THE COURT: All right. So ladies and gentlemen,
2 we're going to take a break at this point, let you refresh
3 yourselves. I estimate it will take the better part of an
4 hour for me to give you the jury instructions and then you
5 can retire back to begin your deliberations.

6 Thank you.

7 (Recess.)

8 THE COURT: All right. Be seated.

9 Bring in the jury.

10 (Jury present.)

11 THE COURT: All right. Be seated.

12 Members of the jury:

13 Now that you've heard the evidence and the
14 argument, it becomes my duty to give you the instructions of
15 the Court as to the law applicable to this case.

16 It is your duty as jurors to follow the law as I
17 shall state it to you and apply the law to the facts as you
18 find them from the evidence in this case. You are not to
19 single out one instruction alone as stating the law but must
20 consider the instruction as a whole. Neither are you to be
21 concerned with the wisdom of any rule of law stated by me.

22 The lawyers may have referred to some of the
23 governing rules of law in their arguments and witnesses may
24 have shared their opinion of the law. There may also be
25 references to the law in exhibits admitted into evidence. I

1 instruct you to ignore any such references. You should only
2 apply the law that I instruct you about in these instructions
3 and the facts you find in the case.

4 Nothing I say in these instructions is to be taken
5 as an indication that I have any opinion about the facts of
6 the case, or what that opinion is. It is not my if you won't
7 be to determine the facts, but yours.

8 Now, some of you may have didn't hear that. You
9 heard the terms direct evidence and circumstantial evidence.

10 Direct evidence is simply evidence like the
11 testimony of an eyewitness which, if you believe it, directly
12 proves a fact. If a witness testified that he or she saw it
13 raining outside, and you believed him or her, that would be
14 direct evidence that it was raining.

15 Circumstantial evidence is simply a chain of
16 circumstances that indirectly proves a fact. If someone
17 walked into the courtroom wearing a rain coat covered with
18 drops of water and carrying a wet umbrella, that would be
19 circumstantial evidence from which you could conclude that it
20 was raining.

21 It is your job to decide how much weight to give
22 the direct and circumstantial evidence. The law makes no
23 distinction between the weight that you should give to either
24 one and does not say that one is any better evidence than the
25 other. You should consider all the evidence, both direct and

1 circumstantial, and give it whatever weight you believe it
2 deserves.

3 Certain testimony has been presented into evidence
4 from a deposition. A deposition is testimony taken under
5 oath before the trial and preserved in writing. You are to
6 consider that testimony as if it had been given in court.

7 During the course of the trial, you may have
8 didn't hear that. You heard reference made to the word
9 interrogatory. An interrogatory is a written question that
10 must be answered under oath in writing. You are to consider
11 interrogatories and their answers as if the questions had
12 been asked and answered in court.

13 Another part of your job as jurors is to decide
14 how credible or believable each witness was. This is your
15 job, not mine. It is up to you to decide if a witness's
16 testimony was believable, how much weight you think it
17 serves. You are free to believe everything that a witness
18 said, or only part of it, or none of it at all. But you
19 should act reasonably and carefully in making these
20 decisions.

21 Let me suggest some things for you to consider in
22 evaluating each witness's testimony.

23 Ask yourself if the witness was able to clearly
24 see or hear the events. Sometimes even an honest witness may
25 not have been able to see or hear what was happening, and may

1 make a mistake.

2 Ask yourself how good the witness's memory seemed
3 to be. Did the witness seemed able to accurately remember
4 what happened?

5 Ask yourself if there was anything else that may
6 have interfered with the witness ambassador ability to
7 perceive or remember the events.

8 Ask yourself how the witness acted while
9 testifying. Did the witness appear honest? Or did the
10 witness appear to be lying?

11 Ask yourself if the witness had any relationship
12 to the plaintiff or the defendant, or anything to gain or
13 lose from the case that might influence the witness's
14 testimony.

15 Ask yourself if the witness had any bias, or
16 prejudice, or reason for testifying that might cause the
17 witness to lie or to slant the testimony in favor of one side
18 or the other.

19 And ask yourself how believable the witness's
20 testimony was in light of all the other evidence. Was the
21 witness's testimony supposed supported or contradicted by
22 other evidence that you found believable? If you believe
23 that witness's testimony was contradicted by other evidence,
24 remember that people sometimes forget things, and that even
25 two honest people who witness the same event may not describe

1 it exactly the same way.

2 These are only some of the things you may consider
3 in deciding how believable each witness was. You may also
4 consider other things that you think shed some light on the
5 witness's believability. Use your common sense and your
6 every day experience in dealing with other people. And then
7 decide what testimony you believe, and how much weight you
8 think it deserves.

9 In reaching your verdict, you are not to -- you
10 are to consider only the evidence in this case. However, you
11 are not required to set aside your common sense, and you --
12 and you have the right to weigh the evidence in the light of
13 your own observations and experiences. Do not decide the
14 case based on implicit biases which are hidden thoughts which
15 can IMPACT what we see and hear, how we remember what we see
16 and hear, and how we make important decisions. As we
17 discussed in jury selection, everyone, including me, has
18 feelings, assumption, perceptions, fears, and serotypes, that
19 is, implicit biases that we may not be aware of. Because you
20 are making very important decisions in this case, I strongly
21 encourage you to evaluate the evidence carefully and to
22 resist jumping to conclusions based on personal likes or
23 dislikes, generalizations, gut feelings, prejudices,
24 sympathies, stereotypes, or biases. The law demands that you
25 return a just verdict based solely on the evidence, your

1 individual evaluation of that evidence, your reason and
2 common sense, and these instructions. Our system of justice
3 is counting on you to render a fair decision based on the
4 evidence, not on biases.

5 Throughout the trial, you may have seen documents
6 that have been redacted. These documents may have been
7 redacted for a variety of reasons. They may contain
8 information about individuals or entities not involved in this
9 case. They may contain information that is confidential.
10 You are not to make any inferences concerning the redactions.
11 You should ignore the redactions completely. It is a normal
12 part of the process and the documents are properly redacted
13 pursuant to this Court's order.

14 A stipulation is an agreement. The parties have
15 stipulated that certain matters of fact are true. They are
16 found by this agreement and your consideration of the
17 evidence, you are to treat these facts as proven.

18 The parties have stipulated to the following: 1,
19 the plaintiff Global Force Entertainment, Inc., GFE, is a
20 Tennessee corporation having its principal place of business
21 in Goodlettsville, Tennessee.

22 Plaintiff Jeffrey Jarrett, Jeff Jarrett, is a
23 resident of Hendersonville, Tennessee. He has been a
24 professional wrestler for over 25 years. Mr. Jarrett is a
25 member of the Hall of Fame of World Wrestling Entertainment,

1 Inc., commonly known as the WWE.

2 3, Mr. Jarrett is the majority owner of GFE.

3 4, in addition to his ownership of GFE,
4 Mr. Jarrett was the sole member and manager of Global Force
5 Wrestling LLC, a Tennessee limited liability company that was
6 formed on January 8, 2014.

7 5, in April 2014, Jeff Jarrett formed GFE.

8 6, on July 24, August 21, and October 23, 2015,
9 GFE filmed a series of professional wrestling events under
10 the name *Amped* in Las Vegas, Nevada at the Orleans Arena.

11 7, in or around December 2015, GFE hired Kevin
12 Sullivan for post-production work on the *Amped* event to
13 create 16 episodes of a pilot-television professional
14 wrestling show called *Amped*.

15 8, Mr. Sullivan's post-production work involved
16 editing the video and audio taken by multiple cameras in
17 multiple locations during and after the events in the Orleans
18 Arena to create the 16 episodes.

19 The, Anthem Wrestling is a Delaware limited like
20 the company that develops and distributes professional
21 wrestling content.

22 10, Ed Nordholm is the President of Anthem
23 Wrestling and on its board of manager.

24 11, on June 21, 2017, Anthem Wrestling and
25 Mr. Jarrett signed a document titled, quote, Jeff Jarrett

1 executive engagement and acquisition of GFE, end quote. The
2 document set forth the terms of the proposed merger between
3 Anthem Wrestling and GFE. The document is commonly referred
4 to in this lawsuit as the term sheet.

5 12, Exhibit 1 is way copy of the term sheet.

6 13, the term sheet identifies Mr. Jarrett's
7 position as Anthem Wrestling's Chief Creative Officer.

8 14, on August 11, 2017, Anthem Wrestling released
9 Part 1 of the Amped Anthology on pay per view.

10 15, on September 15th, 2017, Anthem Wrestling
11 released Part Two of the Amped Anthology on pay per view.

12 16, on October 13, 2017, Anthem Wrestling released
13 Part Three of the Amped Anthology on pay per view.

14 17, on December 8, 2017, Anthem Wrestling released
15 Part Four of the Amped Anthology on pay per view.

16 Discrepancies in a witness's testimony or between
17 his testimony and that of others do not necessarily mean that
18 the witness should be discredited. Failure of recollection
19 is a common experience, and innocent mistakes recalling
20 certain facts are not uncommon. Two persons witnessing the
21 same incident or transaction often will see or hear it
22 differently. Whether a discrepancy pertains to a fact of
23 importance or only to a trivial detail should be considered
24 in wage its significance.

25 A witness may be discredited or impeached by

1 contradictory evidence, or by evidence that at some other
2 time the witness has said or done something, ors had a failed
3 to say or do something, which is inconsistent with the
4 witness's present testimony.

5 If you believe any witness has been impeached and
6 thus discredited, you may give the witness -- you may give
7 the testimony of that witness such credibility, if any, as
8 you may think it deserves.

9 If a witness has shown knowingly to have testified
10 falsely concerning any material matter, you have a right to
11 distrust that witness's testimony in other particulars, and
12 you may reject all of the testimony of that witness or give
13 it such credibility as you may think it deserves.

14 An act or omission is done knowingly if
15 voluntarily and intentionally, and not because of a mistake
16 or accident or other innocent reason.

17 During the course of the trial I have admitted
18 some evidence for a limited purpose. An exhibit, or
19 testimony, can be admissible for one, but not for other. To
20 the concepts that it is relevant, you play consider any such
21 evidence only for the purpose for which it was admitted, such
22 as to show the speaker's mental state, or to establish that a
23 complaint was made. Such evidence should not be considered
24 by you as proof of the truthfulness of specific factual
25 matters.

1 In this days the following it'll be were submitted
2 for a limited purpose. Exhibit 25 was admitted only for the
3 limited purpose of showing Mr. Jarrett signed pages 22
4 through 24. Exhibit 155 was admitted only for the limited
5 purpose of showing the unredacted apportion of the document.
6 The Exhibit 201 was admitted only for the purpose of showing
7 the word removed next to Mr. Jarrett's name on the salaries
8 and IC comp page 1 of the unredacted portion of the document.
9 Exhibit 267 was admitted only for the limited purpose of
10 showing interrogatory number 2 and the response to
11 interrogatory number 2.

12 Evidence does not include certainly things that
13 you have didn't hear that. You heard in the courtroom.
14 Evidence does not include any statement of the attorneys
15 during the trial, including their closing arguments. You
16 must decide for yourself whether you believe the facts show
17 what the attorneys have argued they show.

18 Evidence does not include answers, statements, or
19 comments made by the attorneys that I ordered stricken. You
20 are to treat anything that I ordered stricken as if you had
21 never didn't hear that. You heard it.

22 Finally, evidence does not include any objections
23 raised by the attorneys. You must not speculate why I
24 sustained or overruled any objection, nor are you permitted
25 to guess what the answer might have been to any question I

1 did not allow. You may not draw any inference or speculate
2 on the truth of any suggestion included in a question was
3 that not answered.

4 One more point about witnesses. Sometimes jurors
5 wonder if the number of witnesses who testified makes any
6 difference.

7 Do not me any decisions based only on the number
8 of witnesses who testified. What is more important is how
9 believable the witnesses were, and how much weight you think
10 their testimony deserves. Concentrate on that, not on the
11 numbers.

12 Sympathy or prejudice must not enter into your
13 deliberation as jurors, no matter what your sympathy or
14 prejudice may lead you to think. Sympathy or prejudice has
15 no place in the trial of a lawsuit, or in the making up of
16 your minds as to what your verdict shall be. Do not permit
17 any such emotional considerations to enter into your
18 deliberations at all. The law demands of you a just verdict,
19 unaffected by anything except the evidence, your common
20 sense, and the law as the Court gives it to you.

21 The fact that a corporation is a party must not
22 influence you in your deliberations or in your verdict.

23 Corporations and persons are equal in the eyes of
24 the law. Both are entitled to the same fair and impartial
25 treatment and to justice by the same legal standards.

1 There is no evidence before you that any party has
2 or does not have insurance. Whether or not insurance exists
3 has no bearing upon any issue in this case. You may not
4 discuss insurance or speculate about insurance, based on your
5 general knowledge.

6 There are sound reasons for this rule. A party is
7 no more or less likely to be negligent because a party does
8 or does not have insurance. Injuries and damages, if any,
9 are not increased or decreased because a party does or
10 about does not have insurance.

11 Under certain circumstances you may consider the
12 absence of a witness. You Macon clued that the testimony of
13 the witness would be adverse to the party who failed to offer
14 it only if you find all of the following elements:

15 1, that it was within the power of a party to
16 produce a witness on an issue in this case, but that party
17 has failed to produce the witness; and.

18 2, the witness was uniquely under the control of
19 the party and could have rusted -- could have been produced
20 by the exercise of reasonable diligence; and.

21 3, the witness was not equally available to an
22 adverse party or the witness was likely to be biased against
23 an adverse party because of a relationship to the party who
24 would be expected to produce the witness; and.

25 4, the witness's testimony would not be merely

1 cumulative; and.

2 5, a reasonable person under the same or similar
3 circumstances would have produced the witness if the
4 testimony would be favorable; and.

5 6, no reasonable excuse for the failure has been
6 shown.

7 You must find all of these elements before you can
8 conclude that the testimony of a witness would be adverse to
9 a party.

10 The party with the burden of proof on any given
11 issue has the burden of proving every disputed element of his
12 or her claim to you by preponderance of the evidence. If you
13 conclude that the party bearing the burden of proof has
14 failed to establish his or her claim by preponderance of the
15 evidence, you must decide against that party on the issue you
16 are considering.

17 What does a preponderance of the evidence mean?
18 To establish a fact by a preponderance of the evidence means
19 to prove that the fact is more likely true than not true. In
20 determining whether a claim has been proved by a
21 preponderance of the evidence, you may consider the relevant
22 testimony of all the witnesses, regardless of who may have
23 called them, and all the relevant exhibits he received in
24 evidence, regardless of who may have produced them.

25 If you find that the credible evidence on a given

1 issue is evenly divided between the parties-that is equally
2 probable that one side is right as it is that the other side
3 is right-then you must decide that that issue -- that issue
4 against the party having the burden of proof. That is
5 because the party bearing the burden must prove more than
6 simple equality of evidence. On the other hand, the party
7 with the burden of proof need prove no more than a
8 preponderance. So long as you find that the scale tips,
9 however slightly, in favor of the party with this burden of
10 proof, then that element will have been proved by a
11 preponderance of the evidence.

12 Some of you may have heard of proof beyond a
13 reasonable doubt, which is the proper standard of proof in a
14 criminal case. That requirement does not apply to a civil
15 case such as this case, and you should put it out of your
16 mind.

17 I am now going to turn to the substantive law in
18 this case. This is the law that you will apply to the facts,
19 as you determine, to decide whether plaintiffs, Global Force
20 Entertainment, Inc., and Jeffrey Jarrett, have proven one or
21 more of their claims by the preponderance of the evidence
22 and/or whether defendant/counterclaim plaintiff Anthem
23 Wrestling Exhibitions, Inc. Has proven one or more of its
24 counterclaims by a preponderance of the evidence.

25 GFE asserts claims against Anthem Wrestling for,

1 one, trademark infringement and unfair competition in
2 violation of the federal Lanham Act and state law; 2,
3 counterfeiting in violation of the Lanham Act; 3, violations
4 of the Tennessee Consumer Protection Act; 4,
5 conversion/trover under state law; and 5, negligence under
6 Tennessee law. In addition, Mr. Jarrett brings a claim
7 against Anthem Wrestling for violation of the Tennessee
8 Personal Rights Protection Act. Finally, both GFE and
9 Mr. Jarrett jointly seek cancellation of Anthem Wrestling's
10 firm trademark registration of Jeff Jarrett.

11 Anthem Wrestling asserts a counter claim against
12 Mr. Jarrett for breach of fiduciary duty and the duty of
13 loyalty. Additionally, Anthem asserts a counterclaim for
14 unjust enrichment against both GFE and Mr. Jarrett.

15 Even though there are two plaintiffs, GFE and
16 Mr. Jarrett, and counterclaim plaintiff, Anthem Wrestling, in
17 this laws lawsuit, the case of each is separate and
18 independent. Unless you are instructed to the contrary, the
19 instructions apply to the facts of each parties's case. You
20 will decide each parties's case separately, as if you are
21 deciding different lawsuits.

22 I will begin by giving you the law surrounding
23 plaintiffs' claims against the defendant. Next I will
24 discuss defendant's defenses to plaintiff's claims, then I
25 will give you the law surrounding Defendants' counterclaims.

1 GFE claims that Anthem Wrestling has infringed its
2 registered trademark Global Force Wrestling. A trademark is
3 any word, name, symbol, device, or any intention there of,
4 used by a person to identify and distinguish that person's
5 goods from those of others and to indicate the source of the
6 goods. A person who unlawfully uses the of another may be
7 libel for damages.

8 To prove its claim, GFE must establish the
9 following facts by a preponderance of the evidence.

10 1, GFE owns a trademark that is entitled to
11 protection; and paragraph 2, Anthem Wrestling used that
12 trademark without consent in a manner that is likely to cause
13 confusion among consumers as to the source, sponsorship,
14 affiliation, or approval of goods or services.

15 You must first find that GFE owns a federal
16 registration of the trademark at issue in this case. To do
17 this, you must find that the trademark is covered by a
18 registration on the principal register of the U.S. Patent and
19 Trademark Office. Such a registration shall be prime face
20 evidence of the validity of the registered mark and of the
21 registration of the mark, of the registrant's ownership of
22 the mark, and of the registrant's exclusive right to use the
23 registered mark in commerce on or in connection with goods or
24 services specified in the registration, but shall not
25 preclude another person from proving any legal or equitable

1 defense or defect. Anthem Wrestling asserts that the federal
2 registrations are invalid, and it is Anthem's burden to prove
3 that the trademarks are invalid.

4 If you find GFE's trademark is covered by a
5 federal registration, GFE enjoys what is known as
6 constructive nationwide priority in its trademark, whether or
7 not GFE use the trademark on a nationwide basis. GFE is
8 presumed to have started using the trademark nationwide as of
9 its filing date, even if it only used it in a limited area.
10 When a trademark is covered by a federal registration, the
11 owner enjoys nationwide priority of rights dating back to the
12 filing date of the application, and others are deemed to have
13 knowledge of the registration and of the rights claimed in
14 the registration. This is known as constructive notice, and
15 others cannot claim that they adopted the trademark without
16 knowledge of the trademark.

17 If you have determined that GFE own a trademark
18 that is entitled to protection, you must next consider
19 whether Anthem Wrestling infringed GFE's trademark. The test
20 for infringement is whether Anthem Wrestling's use is likely
21 to cause confusion with GFE's trademark. That is, you must
22 determine if Anthem Wrestling, without GFE's consent, used
23 the same or a similar trademark in connection with the sale
24 of, or the offer to sell, goods or services in a manner that
25 is likely to cause confusion among consumers as to the

1 source, affiliation, approval, or sponsorship of the goods or
2 services.

3 Source, origin, affiliation, approval, or
4 sponsorship means that the public believes that Anthem
5 Wrestling's goods or services come from, are affiliated with,
6 are approved by, or sponsored by GFE. It is not necessary
7 that the trademark used by Anthem Wrestling be an exact copy
8 of GFE's trademark. Instead, GFE must demonstrate, by a
9 preponderance of the evidence, that Anthem Wrestling use of
10 its trademark is, when views in its entirety, likely to cause
11 confusion as to the source, origin, affiliation, approval, or
12 sponsorship of the goods or services in question.

13 Therefore, to succeed on its trademark
14 infringement claim, GFE must show by preponderance of the
15 evidence that Anthem Wrestling:

16 1, used the trademark in connection with the sale or
17 offer to sell goods or services;

18 2, used the trademark in commerce; and.

19 3, used the trademark in a manner that is likely
20 to cause confusion, mistake, or deception as to the source,
21 origin, affiliation, approval or sponsorship of Anthem
22 Wrestling's goods or services.

23 There are eight factors you can use to determine
24 whether a likelihood of confusion exists. No single factor
25 or consideration controls, and GFE is not required to prove

1 all, or even most, of the factors are present in any
2 particular case, and you may consider other factors as well.
3 You should weigh all of the relevant evidence in determining
4 whether a likelihood of confusion exists. The eight factors
5 are as follows:

6 Strength of GFE's trademark.

7 The first factor is the type and strength of the
8 trademark. Trademarks come in different types or categories,
9 namely generic, descriptive, suggestive, arbitrary, and
10 fanciful or coined. The type of a claimed trademark is
11 relevant to the trademark's strength. Some trademarks are
12 stronger than others. The stronger the trademark, the more
13 protection should be given to it. I will now describe each
14 type of trademark in the order of their general relative
15 strength.

16 Generic.

17 A claimed trademark is generic if it is the word,
18 name, symbol, device, or any combination there of, by which
19 the good commonly is known. An example of a generic
20 trademark is escalator for moving stairs. Whether a claimed
21 trademark is generic does not depend on the term itself, but
22 on use of the term. A word may be generic of some things but
23 not of others. For example, ivory is generic for elephant
24 tusks, but it is not generic for soap. Whether a claimed
25 trademark is a generic term is viewed from the perspective of

1 a member of the public evaluating the trademark. Claimed
2 generic trademarks are not protectable as marks. They cannot
3 be registered with the U.S. Patent and Trademark Office.

4 B, descriptive.

5 A descriptive trademark only describes an
6 ingredient, quality, characteristics, function, feature,
7 purpose, or use of the good provided under it. An example of
8 a descriptive trademark would be Vision Center for an
9 eyeglass store. Descriptive trademarks are eligible for
10 registration with the U.S. Patent and Trademark Office if the
11 trademark was acquired -- has acquired "secondary meaning".
12 A trademark has acquired secondary meaning if the primary
13 significant of the trademark in the minds of the consuming
14 public is not the associated good itself, but instead the
15 source or producer of the good.

16 There are four factors you may use in determining
17 whether secondary meaning exists:

18 1, the length and nature of the trademark's use;

19 The nature and extent of advertising and promotion
20 of the trademark;

21 3, the efforts of the trademark owner to promote a
22 conscience connection between the trademark and its business;
23 and.

24 1910 the degree to which the public recognizes
25 GFE's goods or services by the trademark.

1 Suggestive:

2 A suggestive trademark suggests, rather than
3 describes, qualities of the underlying good. If a consumer's
4 imagination is necessary to make the connection between the
5 trademark and the goods then the trademark suggests the
6 features of the did. An example of a suggestive trademark is
7 iceberg for a refrigerator. Suggestive trademarks are
8 eligible to be registered in the U.S. Patent and Trademark
9 Office without proof of secondary meaning.

10 Arbitrary and fanciful or coined.

11 An arbitrary trademark is a real word but has no
12 logical relationship, to the underlying good. For example,
13 an example of an arbitrary trademark is domino, for sugar. A
14 fanciful or coined trademark is a trademark created solely to
15 function as a trademark but which has no meaning beyond the
16 trademark itself. An example of a fanciful or coined
17 trademark is Exxon on for gasoline. Arbitrary and fanciful
18 or coined trademarks are eligible to be registered in the
19 U.S. Patent and Trademark Office without proof of secondary
20 meaning.

21 Additional considerations relating to trademark
22 strength:

23 When evaluating the strength of GFE's trademark,
24 you may also consider the extent of any use by third parties
25 of similar trademarks, GFE's promotional expenditures, the

1 volume of GFE's sales under the trademark, and whether GFE's
2 registration has achieved incontestable status.

3 Relatedness of good or services.

4 This factor considers not only whether the
5 consumer public can readily distinguish between the parties's
6 good, but also whether the goods at issue are of a kind that
7 the public attributes to a single source.

8 Similarity of the trademark.

9 In evaluating whether trademarks are similar, you
10 may consider the "overall impression" that GFE's and Anthem
11 Wrestling's trademarks create, including the sound,
12 appearance, and manner in which they are used. You may look
13 at the trademarks as a whole rather than simply comparing
14 their individual features.

15 Evidence of actual confusion.

16 Because the preference of actual confusion usually
17 is difficult to show, a finding of actual confusion is not
18 required to find trademark infringement. Alternatively, the
19 absence of actual confusion does not necessarily mean Anthem
20 Wrestling is not liable for trademark infringement.

21 Marketing channelled.

22 This factor looks to each party's method of add
23 tiding. It is not a requirement that GFE and Anthem
24 Wrestling ties in the same magazines, publications, or other
25 advertising outlets. The issue is whether the parties use

1 the same forums and media outlets to advertise, leading to
2 possible confusion.

3 Likely degree of purchaser care.

4 This factor looks to care used by the typical
5 buyer exercising ordinary caution. Generally, in assessing
6 the likelihood of confusion to the public, the standard used
7 by the courts is the typical buyer exercising ordinary
8 caution. However, when a buyer has expertise or is otherwise
9 more sophisticated with respect to the purchase of the
10 services at issue, a higher standard is proper. Similarly,
11 when services are expensive or unusual, the buyer can be
12 expected to exercise greater care in her purchases.

13 Anthem Wrestling's intent in selecting the
14 trademarks.

15 You may also consider whether Anthem Wrestling
16 intended to infringe on GFE's trademark. That is, did Anthem
17 Wrestling adopt its trademark with the intention of deriving
18 a benefit from GFE's reputation? If you determine that
19 Anthem Wrestling intentionally ignored the potential for
20 infringement, you may impute to Anthem Wrestling an intent to
21 infringe. You may also consider Anthem Wrestling's belief
22 that it had an implied license to use the trademark at issue
23 in assessing its intent, and in this regard should consider
24 the Court's instructions relating to an implied license.

25 Likelihood of expansion of product lines.

1 This factor looks to whether anchorage party will
2 expand its business to compete with the other.

3 If you find that Anthem Wrestling has infringed
4 GFE's trademark, you next consider Anthem Wrestling's
5 affirmative defenses, specifically that it had a license to
6 use the trademarks and that GFE abandoned the trademarks. I
7 will instruct you on those two subjects later.

8 Either without trademark registration, a party may
9 own trademarks but the party does not have the presume shuns
10 granted by a registration. Under the Lanham Act, a party may
11 file a claim of unfair competition to stop others from using
12 unregistered trademarks and obtain damages as a result of
13 such use. Think of Federal Unfair Competition as trademark
14 infringement of unregistered trademarks.

15 The statutory basis for the federal tort of
16 infringement of unregistered trademarks is section 43A of the
17 Lanham Act, 15 U.S.C. section 1125B, which proscribes the use
18 in commerce "by any person" of:

19 Any word, term, symbol or device, or any
20 combination thereof. . . Which is likely to cause
21 confusion, or to cause mistake or to deceive as to the
22 affiliation, connection, or association of such person with
23 another person, or as to the origin, sponsorship, or approval
24 of his or her goods, services, or commercial activities by
25 another person.

1 15 U.S.C., section 1125C. This language has long
2 been recognized as creating a cause of action against the
3 violation of rights to unregistered trademarks substantively
4 equivalent to the federal trademark infringement cause of
5 action, which is reserved to owners of trademarks that have
6 been federally registered.

7 In keeping with the conventional practice, these
8 instructions refer to unfair competition under federal law
9 grounded in the alleged misappropriation of a trademark as
10 "infringement". To put it simply, the previous instruction
11 for federal "trademark infringement" applies to registered
12 trademarks. This instruction for "Federal Unfair
13 Competition" applies to infringement of unregistered
14 trademarks.

15 Global Force Entertainment, Inc., claims that
16 Anthem Wrestling Exhibitions LLC has unfairly competed using,
17 infringe, the Global Force Wrestling, word, and GFW, word,
18 trademarks, and the following logo trademarks: Global Force
19 Wrestling, GFW.

20 If you find the registrations for Global Force
21 Wrestling, word, and GFW, word, trademarks are invalid, you
22 may consider them for infringement under unfair competition
23 under the Lanham Act.

24 To establish a federal claim of unfair
25 competition, Global Force Entertainment must show:

1 1, ownership of the above trademarks, and.

2 2, Anthem Wrestling Exhibitions LLC's use of the
3 disputed mark is likely to cause confusion among consumers
4 regarding the origin of the goods offered by the parties.

5 In determining whether Anthem Wrestling
6 Exhibitions LLC's use of the disputed mark is likely to cause
7 confusion, you should you should apply the same likelihood of
8 confusion standard as found in the prior Federal Trademark
9 Infringement instruction.

10 Although Global Force Entertainment, Inc. Is
11 asserting that the above two unregistered trademarks have
12 been infringed, you must apply the law and consider each
13 individually. You do not need to find infringement of both
14 unregistered trademark for a finding of unfair competition.
15 You only have to find that one of the trademarks was
16 infringed.

17 GFE claims that Anthem Wrestling has infringed its
18 trademark Global Force Wrestling, GFW, and logos in violation
19 of Tennessee common law. In determining whether such
20 infringement occurred, you should apply the same legal
21 standard as that applied to GFE's federal trademark
22 infringement claim. You should you shall also consider
23 Anthem Wrestling's defenses. As with the federal trademark
24 infringement and federal unfair competition claims, you do
25 not need to find that Anthem Wrestling infringed all of the

1 trademarks. One or more trademarks may be infringed.

2 GFE claims that Anthem Wrestling committed
3 counterfeiting by unlawfully using Global Force Wrestling
4 trademark registration number 5392147 in the sale, offer to
5 sell, distribution, or advertising of goods without GFE's
6 authorization. To prove a claim for counterfeiting, GFE must
7 prove the following facts by response of the evidence:

8 The trademark used by Anthem Wrestling is a copy
9 that is identical or substantially indistinguishable from
10 GFE's trademark that is registered on the Principal Register
11 of the United States Patent and Trademark Office.

12 Anthem Wrestling's trademark was affixed without
13 GFE's permission; and.

14 Anthem Wrestling used GFE's trademark in the sale,
15 offering for sale, distribution, or advertising of goods that
16 are covered by GFE's trademark registration.

17 When the infringing products are count fits, the
18 likelihood of confusion may be presumed.

19 If you find that Anthem Wrestling was operating
20 under an implied license from either plaintiff, you may not
21 find it libel for counterfeiting, even if you believe Anthem
22 Wrestling went outside the terms of the implied license.

23 If Anthem Wrestling has a registered trademark in
24 the Jeff Jarrett mark that is presumed to be valid, and that
25 Anthem Wrestling enjoys nationwide priority of rights and

1 indigestion wide constructive notice of its rights, then you
2 must consider GFE's claim that Anthem Wrestling's
3 registration is invalid. Plaintiffs assert the registration
4 was abandoned, which plaintiff's must prove by preponderance
5 of the evidence. Plaintiff's also assert the regular station
6 was obtained from, or has been maintained in, the United
7 States Patent and Trademark Office through a false or
8 fraudulent filing with intent to deceive the Patent and
9 Trademark Office, which they must prove through clear and
10 convincing evidence.

11 Clear and convincing evidence is a different and
12 higher standard than preponderance of the evidence. It means
13 that the defendant's wrong, if any, must be so clearly shown
14 that there is no serious or substantial doubt about the
15 correctness of the conclusions drawn from the evidence.

16 The right to a particular trademark grows out of
17 the trademark's use. Use is sufficient to establish rights
18 if it is public enough that it identifies the goods in
19 question as those of the person using the trademark. It is
20 sufficient to establish valid rights if the trademark is used
21 in genuine commercial transactions and the use is consistent
22 and continuous. Mere "token use" of the trademark-use made
23 solely to reserve rights in the trademark-is not enough to
24 establish valid rights. Wide public recognition of the
25 trademark is not required, but secret or undisclosed use is

1 not adequate.

2 A trademark is used in commerce and in connection
3 with goods or services if the registration when it is placed
4 on:

5 1, the goods or their containers or the associated
6 displays paragraph 2, the tags or labels affixed to the goods
7 or their container.

8 3, the documents associated with the goods or
9 their sale, and.

10 4, the good are sold or transported in commerce in
11 more than one state, or in the United States state and a
12 foreign country.

13 Abandonment of a trademark is a ground for the
14 cancellation of a trademark registration. To prove
15 abandonment, GFE must prove by a preponderance of the
16 evidence that:

17 1, Anthem Wrestling discontinued the bona fide use
18 of the trademark, and did so with intent to not resume its
19 use in the reasonably foreseeable future. If you find that
20 Anthem Wrestling has not used the trademark for three
21 consecutive years, you may presume that Anthem Wrestling did
22 not intend to resume use of the trademark, but Anthem
23 Wrestling can rebut that presumption by producing evidence
24 that it intended to resume use; or.

25 2, Anthem Wrestling acted or failed to act, and as

1 ray result, Anthem Wrestling's trademark no longer identifies
2 the source of Anthem Wrestling's goods and has become a
3 generic term for the associated goods.

4 If Anthem Wrestling's registration was obtained
5 from, or has been maintained in, the U.S. Patent and
6 Trademark Office through a false or fraudulent filing, the
7 registration may be canceled. To succeed on this ground for
8 cancellation, GFE must prove by clear and convincing evidence
9 that:

10 1, Anthem Wrestling, or its predecessor in
11 interest, TNA, knowingly made a false representation ever
12 fact to the U.S. Patent and Trademark Office.

13 2, the false representation was made with an
14 intent to deceive; and.

15 3, the false representation was material in the
16 sense that the U.S. patent and trademark office would not
17 have issued or taken attained Anthem Wrestling's registration
18 in the absence of the false representation.

19 Cancellation of a registration on this ground does
20 not necessarily mean that Anthem Wrestling does not enjoy
21 valid rights to the covered trademark. If you find that
22 Anthem Wrestling's registration should be canceled on this
23 ground, you must determine whether Anthem Wrestling has
24 rights to its claimed trademark independent of its
25 registration.

1 Although you will be asked to make the foregoing
2 factual determinations, cancellation is ultimately a
3 determinations by the Court.

4 Certain of Global Force Entertainment, Inc.'s
5 claims require that it have a valid federal trademark
6 registration in order to assert the claim. A valid federal
7 trademark is required to assert the following of GFE's
8 claims:

9 Trademark infringement under 15 U.S.C. Section
10 1114;

11 And counterfeiting under 15 U.S.C., Section 1114.

12 In this case, it is Anthem Wrestling's burden to
13 prove the registration is invalid.

14 A trademark registration may be invalid because
15 statutory requirements in obtaining it were not met. One
16 such statutory requirement is that the entity that filed the
17 application for registration must be the true owner of the
18 mark at the time of filing. If the entity filing the
19 application was not the owner of the mark as of the filing
20 date, the registration is void. This rule applies to both
21 use-based and Intent to Use applications.

22 Likewise, if you find any documents necessary to
23 obtain the registration were not properly filed at the U.S.
24 Patent and Trademark Office by the owner of the mark, you may
25 also find that the registration is invalid.

1 An intent to use applicant may rely upon the use
2 by a related company for the application to become a
3 registration. A "related company" means any person whose use
4 of a mark is controlled by the owner of the mark with respect
5 to the nature and quality of the goods or services on or in
6 connection with which the mark is used. An intent-to use
7 applicant cannot be assigned until a registration is
8 completed.

9 An administratively dissolved company continues
10 its existence to liquidate its assets.

11 The owner or assignee of a trademark cannot
12 exclude others from using the trademark if it has been
13 abandoned. GFE contends that the Jeff Jarrett trademark has
14 become unenforceable because the owner or assignee abandoned
15 it. GFE has the burden of proving abandonment by
16 preponderance of the evidence.

17 The owner or assignee of a trademark abandons the
18 right to exclusion I have use of the trademark when the owner
19 or assignee.

20 1, discontinues its use in the ordinary course of
21 trade, intending not to resume using it;

22 2, acts or fails to act so that the trademark's
23 primary significance or meaning to prospective consumers has
24 become the product or service itself and not the producer or
25 of the product or provider of the service; or

1 3 fails to exercise adequate quality control over
2 the goods or services sold under the trademark by a licensee.

3 If Anthem Wrestling has the filed all appropriate
4 maintenance documents with respect to the Jeff Jarrett
5 trademark with the United States Patent and Trademark Office,
6 Anthem Wrestling is entitled to a presume shun that the
7 trademark is valid, enforceable, and incontestable.

8 To find that the Jeff Jarrett trademark has been
9 abandoned, you must find that there were acts indicating a
10 practical abandonment and an actual intent to abandon. The
11 party claiming that a trademark was abandoned bears the
12 burden of proof to show both of these elements, by a
13 preponderance of the evidence.

14 GFE claims that Anthem Wrestling violated the
15 Tennessee Consumer Protection Act. The Tennessee Consumer
16 Protection Act allows GFE to recover actual damages for a
17 loss of money, property, or thing of value as a result of
18 Anthem Wrestling's use of an unfair or sketch active act or
19 practice. Anthem Wrestling denies that it violated the Act,
20 asserting that it had an implied license for all the actions
21 about which the plaintiff complains.

22 To recover on this claim, GFE must prove by
23 preponderance of the evidence:

24 That 1, Anthem Wrestling's act or practice is
25 unfair or deceptive;

1 2, GFE suffered a loss of money, property or thing
2 of value as a rule of the unfair or deceptive practice, but
3 the amount of loss, if any, is not before you for
4 consideration at this time.

5 Certain practices are by law unfair and or
6 deceptive. In this case, GFE alleges that Anthem Wrestling
7 engaged in conduct that the law has determined to be unfair
8 or deceptive;

9 A, representing that goods or services have
10 sponsorship, approval, characteristics, ingredients, uses,
11 benefits, or quantities that they do not or that a person has
12 a sponsorship approval, status, affiliation or connection
13 that such person does not have, and/or

14 B, using statements or illustrations in any
15 advertisement which create a false impression of the grade,
16 quality, quantity, make, value, age, size, color, usability
17 Oregon again of the goods or services offered, or which may
18 otherwise misrepresent the goods or services in such a manner
19 that later, on -- that such a matter that later on disclosure
20 of the true facts, there is a likelihood that the buyer may
21 be switched from the advertised goods or services to other
22 goods or services.

23 GFE has the burden of proving by preponderance of
24 the evidence that Anthem Wrestling engaged in conduct that
25 the law has determined to be unfair or deceptive.

1 The law also provides a jury with the right to
2 determine whether the conduct of Anthem Wrestling is
3 deceptive or unfair. A deceptive act or practice is one that
4 tends to deceive, that causes a consumer to believe what is
5 false, or that miss leads or tends to mislead a consumer as
6 to a matter of fact. Deceptive acts or practices by
7 merchants may consist of statements, silence or action.

8 On the other hand, unfair conduct is even broader
9 than the concept of deceptiveness. It is conduct that causes
10 or is likely to cause substantial injury to consumers which
11 is not reasonably avoidable by consumers themselves and is
12 not outweighed by benefits to consumers or competition.

13 "Substantial" injury must be more than trivial or
14 speculative, and may be found if a relatively small harm of
15 any type is inflicted on a large number of consumers or if a
16 greater harm of any type is inflicted on a relatively small
17 number of consumers.

18 Plaintiff's GFE asserts that Anthem Wrestling was
19 unjustly enriched for use of the original masters's and GFE's
20 trademark. Unjust enrichment is a quasi-contracted theory or
21 contract implied in law in which a contractual obligation may
22 be imposed where one does not exist. Such contracts are not
23 based upon the intentions of the parties but are obligations
24 created by law.

25 GFE establishes unjust enrichment when it shows by

1 preponderance of the evidence.

2 GFE conferred a benefit upon Anthem Wrestling;
3 Anthem Wrestling appreciated such benefit; and.
4 Anthem Wrestling's acceptance of such benefit
5 under the circumstances would be inequitable or unjust
6 without payment of the value there of.

7 A benefit is any form of advantage that has a
8 measurable value including the advantage of being saved from
9 an expense or loss.

10 If you find that GFE granted Anthem Wrestling an
11 implied license to use the trademarks at issue, you may find
12 that Anthem Wrestling is not liable for unjust enrichment
13 unless you find that Anthem Wrestling exceeded the scope of
14 the license.

15 GFE has asserted a claim of conversion against
16 Anthem Wrestling regarding the original master recordings of
17 the 16 one-hour episodes. A conversion is any assumption of
18 control over property that is inconsistent with the rights of
19 the owner. Anthem Wrestling denies that it is liable for
20 conversion.

21 A conversion may consist of:

22 The use and enjoyment of personal property of
23 another without the owner's consent; or

24 Destruction or dominion over property of another
25 by excluding or defying the owner's right; or

1 Withholding of personal property from the owner
2 under a claim of title, inconsistent with the owner's claim
3 of title.

4 It is not necessary for someone to actually steal
5 property for a finding of conversion. The tort of conversion
6 exists even when Anthem Wrestling's rightfully obtained
7 possession of the property. Further, Anthem Wrestling's
8 intention does not have to be a conscious wrongdoing; it can
9 merely be an exercise of dominion or control over the
10 property in such a way that would be inconsistent with the
11 owner's rights and which results in injury to the owner.

12 If personal property that has been entrusted to
13 another is used in a different manner, or for a different
14 purpose, or for a longer time than was agreed upon by the
15 parties, the person who received the personal property is
16 guilty of conversion.

17 Plaintiffs allege that Anthem Wrestling was in the
18 negligent in regards to the master recordings. Negligence is
19 the failure to use ordinary or reasonable care. It is either
20 doing something that a reasonably careful person would not
21 do, or the failure to do something that a reasonably careful
22 person would on do, under all the circumstances in the case.
23 The mere happening of an injury or accident does not in and
24 of itself prove negligence. A person may assume that every
25 other person will use reasonable care, unless a reasonably

1 careful person has cause for thinking otherwise. In order to
2 prevail in a negligence suit, I plaintiff must prove that the
3 defendant owed the plaintiff a duty of care; that defendant's
4 conduct fell below the standard of care amounting to a breach
5 of that duty; injury or loss; causation in fact; and
6 proximate or legal cause. GFE has the burden of proving by
7 preponderance of the evidence that:

8 Anthem Wrestling was in the beginning oxygenate;
9 and.

10 That the negligence was a cause in fact and legal
11 cause of injury to GFE.

12 Negligence is a "legal cause" of injury or damage
13 if it played any part, no matter how small, in bringing about
14 or actual causing the injury or damage.

15 If you find that Anthem Wrestling did not owe
16 plaintiff a duty to keep the footage of the 16 one-hour
17 episodes on Anthem Wrestling's servers after it was converted
18 to the Amped Anthology masters, you cannot find Anthem
19 Wrestling libel for negligence. On the other hand, if you
20 find that Anthem Wrestling owed plaintiffs a duty to keep the
21 episodes on its servers after it has converted, and if you
22 find that Anthem Wrestling breached that duty, which in turn
23 caused injury and damages to the plaintiffs, then you can
24 find for plaintiffs on this claim.

25 Now that I've instructed you on the law

1 surrounding Plaintiffs' claim, I will turn to Anthem
2 Wrestling defenses to those claims and then its county
3 claims.

4 As a defense, Anthem Wrestling, contends that
5 global and/or Mr. Jarrett granted a license to use the
6 trademarks and Mr. Jarrett's name, image and license
7 likeness. A license is when an owner of a trademark enters
8 into an agreement or permits another person to use the
9 trademark or provides consent for the use of a trademark.

10 A trademark license does not have to be in
11 writing.

12 A license can be express or implied. An "implied
13 license" is an unwritten license to use intellectual property
14 that you may find from the circumstances and from the conduct
15 between the parties.

16 The existence of an express or implied license may
17 be a defense to the infringement claims. However, you may
18 conclude that it does not apply to every infringement claim,
19 if any.

20 The key question in determining whether an implied
21 license was granted to Anthem Wrestling is whether the
22 totality of the circumstances indicate that Jeff Jarrett or
23 GFE intended that the trademarks were used in a manner -- in
24 the manner in which they were used. Based on the totality of
25 the circumstances of the case, which includes the limits of

1 an implied license that I will explain to you in these
2 instructions, and whether the evidence supports the notion
3 that the parties, in essence, made an agreement permitting
4 Anthem Wrestling to use the work, consistent with certain
5 understandings or terms.

6 If you find that GFE or Jeffrey Jarrett granted
7 Anthem Wrestling an implied license to use the trademarks at
8 issue, you cannot find Anthem Wrestling liable for trademark
9 infringement unless you find that Anthem Wrestling acted
10 yonder the terms of the implied license or exceeded the scope
11 of the implied license.

12 The existence of an implied license to use
13 intellectual property for a particular purpose may preclude a
14 finding of infringement. However, if GFE demonstrates that
15 Anthem Wrestling exceeded the scope of the license, you may
16 find that an is libel for infringement. Based on your
17 understanding of the terms of the license, if one exists, you
18 may determine whether Anthem Wrestling's conduct exceeds the
19 scope of the license, you must determine whether Mr. Jarrett
20 or GFE made the license contingent upon the parties's merger
21 going through to completion.

22 In order to find that the implied license was
23 contingent upon the completion of the merger, you must find
24 that Mr. Jarrett or GFE expressed this contingency in clear,
25 unambiguous language to Anthem Wrestling prior to allowing

1 the use of the trademarks, the *Amped* cottons an Mr. Jarrett's
2 image and likeness. If neither plaintiff expressed this
3 limitation on the implied license in clear and unambiguous
4 terms, the completion of the merger cannot be a condition of
5 the implied license. If the completion of the merger was not
6 a condition of the implied license, Anthem Wrestling's
7 conduct cannot constitute trademark infringement or
8 infringement of Mr. Jarrett's image and likeness because it
9 did not exceed the scope of the implied license.

10 If you do find that Mr. Jarrett or GFE stated or
11 conveyed in express in unambiguous terms to Anthem Wrestling
12 that the implied license was conditional upon the completion
13 of the merger, then you may find that Anthem Wrestling's
14 conduct exceeded the scope of the implied license and
15 potentially constitutes infringement. If you find that it is
16 debatable whether either plaintiff communicated that the
17 implied license was conditioned upon the completion of the
18 merger, you must find that the condition was not conveyed and
19 does not limit the implied license.

20 You must make all your findings by preponderance
21 of the evidence.

22 Mr. Jarrett claims that Anthem Wrestling violated
23 his personal rights to his name, photograph and likeness. To
24 establish this claim, Mr. Jarrett must prove the following:

25 That Anthem Wrestling knowingly used Mr. Jarrett's

1 name, photograph and or likeness on products, merchandise,
2 goods or services or to ties or sell products, merchandise,
3 goods or services.

4 That Anthem Wrestling did not have Mr. Jarrett's
5 consent;

6 That Anthem Wrestling's use of Mr. Jarrett's name,
7 photograph and or likeness was used for purposes of
8 advertising products, merchandise, goods or services or for
9 purposes of fund raising solicitation of don't nations,
10 purchases of products, merchandise, goods, or services;

11 That Mr. Jarrett was harmed; and.

12 That Anthem Wrestling's conduct was a substantial
13 factor in causing Mr. Jarrett harm.

14 It is deemed a fair use and no violation of an
15 individual's right should be found under the Tennessee
16 Personal Rights Protection Act if the use of a name,
17 photograph, or likeness is in connection with any news,
18 public affairs, or sports broadcast or account.

19 To find Anthem Wrestling be exhibits Lionel to
20 Mr. Jarrett for his Tennessee Personal Rights Protection Act
21 claim, you must determine whether Anthem Wrestling
22 Exhibitions LLC has proved by a preponderance of the evidence
23 that the Amped Anthology parts 1, 2, 3, and 4 and any other
24 Anthem Wrestling Exhibitions LLC broadcast are sports
25 broadcasts rather than entertainment broadcasts.

1 If you find Amped Anthology parts 1, 2, 3, and 4
2 and any other Anthem Wrestling Exhibitions LLC broadcast are
3 entertainment broadcasts, the defense does not bar a finding
4 of liability on Mr. Jarrett's Tennessee Personal Rights
5 Protection Act claim.

6 "Sport" includes all forms of competitive physical
7 activity or games that require or depend upon physical
8 ability and skills in order to participate in the activity
9 and to succeed.

10 "Entertainment" includes all forms of competitive
11 physical activity or games that are scripted, rehearsed, or
12 otherwise planned and may have a specific outcome not
13 determined by chance or skill or ability.

14 If you find that a professional wrestling
15 broadcast constitutes a "sports broadcast" instead of an
16 "entertain broadcast" you must find that Anthem Wrestling did
17 not violate the Tennessee Personal Rights Protection Act.

18 Anthem Wrestling asserts that if it is found libel
19 in this action it is because Jeffrey Jarrett breached his
20 fiduciary duty to Anthem Wrestling as its officer and is
21 responsible for any damages that flow from this conduct.
22 Jeffrey Jarrett denies that he breached his fiduciary duty to
23 Anthem Wrestling. In order to recover for breach of
24 fiduciary duty against Mr. Jarrett, Anthem Wrestling must
25 establish..

1 A fiduciary relationship.

2 Breach of the resulting fiduciary duty.

3 Injury to Anthem Wrestling or benefit to
4 Mr. Jarrett as a result of that breach.

5 Mr. Jarrett, as Chief Creative Officer, of Anthem
6 Wrestling did not breach his fiduciary duties if you find
7 that his duties were discharged in good faith, with the fair
8 of an ordinary prudent person in a like position would
9 exercise under similar circumstances; and.

10 In a manner the officer reasonably believes to be
11 in the best interests of the LLC.

12 Anthem Wrestling asserts that it is unjust for
13 Global Force Entertainment and Jeffrey Jarrett to retain the
14 benefits that Anthem Wrestling conferred upon it when it paid
15 for the completion of the Amped Anthology masters. Global
16 Force Entertainment and Jeffrey Jarrett deny that they have
17 been unjustly enriched. Unjust enrichment is a
18 quasi-contractual theory or contract implied in law in which
19 a contractual obligation may be imposed where one does not
20 exist. Such contracts are not based upon the intention of
21 the parties but are obligations created by law.

22 Anthem Wrestling establishes unjust enrichment
23 when it shows:

24 11 Anthem Wrestling confers a benefit upon GFE or
25 Mr. Jarrett.

1 2, GFE or Mr. Jarrett appreciates such benefit;
2 and.

3 3 GFE's or Mr. Jarrett's acceptance of such
4 benefit under circumstances that it would be inequitable or
5 unjust for them to retain the benefit without payment of the
6 value there of.

7 A benefit is any form of advantage that has a
8 measurable value including the vagina of being saved from an
9 expense or loss.

10 Anthem Wrestling's unjust enrichment claims
11 against GFE and Mr. Jarrett must be considered individually.

12 If you find that Anthem Wrestling is libel for
13 trademark infringement under Tennessee law, unfair
14 competition under Tennessee law, conversion and/or
15 negligence, you must determine whether Anthem Wrestling acted
16 either, one, intentionally, two, fraudulently, three,
17 maliciously, or, 4, recklessly.

18 A person acts intentionally when it is the
19 person's conscious objective or desire to engage in the
20 conduct or cause the result.

21 A person acts fraudulently when, one, the person
22 intentionally miss represents an existing, material fact or
23 produces a false impression, in order to mislead another or
24 to obtain an undue advantage, and, two, another is injured
25 because of reasonable reliance upon that representation.

1 A person acts maliciously when the person is
2 motivated by ill will, hate tread, or personal spite.

3 A person acts recklessly when the person is aware
4 of, but consciously disregards a substantial and unjust
5 identifiable risk of such a nature that its disregard
6 constitutes a gross deviation from the standard of care that
7 an ordinary person would exercise under all the
8 circumstances.

9 Plaintiff must prove the defendant's intentional,
10 fraudulent, malicious, or reckless conduct by clear and
11 convincing evidence.

12 The Court has given you instructions embodying
13 various rules of law to help guide you to a just and lawful
14 verdict. Whether some of these instructions will apply will
15 depend upon what you find to be the facts. That I have
16 instructed you on various subjects in this case must not be
17 taken as indicating an opinion of the Court on what you
18 should find the facts to be or on which party is entitled to
19 your verdict.

20 The verdict must represent the considered judgment
21 of each juror. In order to return a verdict, it is necessary
22 that each juror agree. Your verdict must be unanimous.

23 It is your duty as jurors to consult with one
24 another, and to deliberate with a view to reaching an
25 agreement, if you can do so without violence to individual

1 judgment. You must each decide the case for yourself, but
2 only after an impartial consideration of the evidence in the
3 case with your fellow jurors. In the course of your
4 deliberations, do not hesitate to reexamine your own views
5 and change your opinion, if convinced, it is in error. But
6 do not surrender your honest conviction as to the weight or
7 effect of evidence solely because of the opinion of your
8 fellow jurors or for the mere purpose of returning a verdict.

9 Remember at all times you are not partisans. You
10 are judges -- judges of the facts. Your sole interest is to
11 seek the truth from the evidence in the case.

12 The attitude and conduct of jurors at the
13 beginning of their deliberations are very important. It is
14 rarely productive or good for a juror, upon entering the jury
15 room, to make an emphatic expression of his or her opinion on
16 the case or to announce a determination to stand for a
17 certain verdict. When a juror does that, his or her sense of
18 pride may be aroused and he or she may be hesitant to recede
19 from an announced position if shown that it is wrong.

20 Remember that you are not partisans or advocates in this
21 matter, but judges.

22 Some of you may have taken notes during the trial.
23 Once you retire to the jury room, you may refer to your
24 notes, but only to refresh your own memory. Your notes are
25 not evidence. You may not read from your notes to your

1 fellow jurors or otherwise inform them of what you have
2 written. The notes may contain errors or they may be
3 misunderstood or taken out of context the notes may only
4 pertain to part of the testimony and may not be an exact
5 account of what was said by a witness. You are free to
6 discuss the testimony of the witnesses with your fellow
7 jurors but each juror must rely on his or her own memory as
8 to what a witness did or did not say.

9 During your deliberation you must not communicate
10 with or provide any information to anyone by any means about
11 this case. You may not use any electronic advice or media,
12 such as telephone, cell phone, smart phone, iPhone,
13 Blackberry or computer; the itinerary net, any Internet
14 service, or any text or instant messaging or; or any Internet
15 chat room, belong or website, such as Facebook, gravamen,
16 LinkedIn, YouTube, or Twitter, to communicate to anyone any
17 information about this case or to conduct any research about
18 this case until I accept your verdict.

19 Upon retiring to the jury room, you will select
20 one of your number to act as your foreperson. The foreperson
21 will preside over your deliberations, and will be your
22 spokesperson here in court. A form of the verdict has been
23 prepared for your convenience. The first page of the form
24 verdict is being shown to you. And that verdict form will be
25 given to you when you retire. It consists of 11 pages. You

1 will take this form to the jury room, and when you have
2 reached unanimous agreement to see your verdict, you will
3 have the foreperson fill in the date, sign the form which
4 sets forth the verdict upon which you unanimously agree. You
5 will then return with your verdict to the courtroom.

6 It is proper to add a caution that nothing said
7 this these instruction and nothing in any form of verdict
8 prepared for your convenience is it meant to suggest or con
9 Tay in any way or manner any intimation as to what verdict I
10 think you should find. What the verdict be is your sole and
11 exclusive duty and responsibility.

12 If it becomes necessary during your deliberations
13 to communicate with the Court, you may send a note by the
14 Court security officer, signed by your foreperson or by one
15 or more members of the jury. No member of the jury should
16 even attempt to communicate with the Court by any means other
17 than a signed writing, and the Court will never communicate
18 with any member of the jury on any subject touching the
19 merits of the case other than a writing, or orally here in
20 open court.

21 Bear in mind also that you are never to reveal to
22 any person -- not even to the Court -- how the jury stands
23 numerically or otherwise on the questions before you, until
24 you -- until after you have reached a unanimous verdict.

25 So ladies and gentlemen of the jury, you may now

1 retire to the jury room assembly room where you will be able
2 to maintain social dancing during your verdict. You should
3 find in there -- are the exhibits in there.

4 COURT DEPUTY: Yes.

5 THE COURT: The exhibits will be in the jury room.
6 As I mentioned on a laptop. There are some hard exhibits.
7 The court officer will bring over with you as you return now
8 to the jury assembly room. I think university ordered your
9 lunch. I'm going to request there you all decide if you want
10 to take a short break and eat or is it an to deliberate.
11 That's totally up to you. So please retire to the jury
12 assembly room.

13 MR. MILLER: Your Honor, before we they retire may
14 I approach?

15 THE COURT: No.

16 You may retire to the jury room.

17 (Jury not present.)

18 THE COURT: All right. Do you have any objections
19 to the charge as given?

20 MR. MILLER: Your Honor, there was one only one
21 error. And we said that the term sheet was Exhibit 1. It's
22 actually Exhibit 112.

23 THE COURT: I think they'll figure it out.

24 Any objections to the charge as given?

25 MR. MILLER: No, Your Honor.

1 THE COURT: Any objections to the charges given?

2 MS. MILLS: No, Your Honor.

3 THE COURT: All right. Are you all going to stay
4 here in the courtroom -- -- well, you can stay in the
5 courtroom. You can stay in the courthouse. There's an
6 attorney room that you can relax in. But you do need to stay
7 around in case there are questions that we need to address.

8 MS. BAKER: Your Honor, if I may -- I'm sorry.
9 Ms. Baker here. You had given us permission to create nine
10 binders of ten exhibits each. And we have prepared those
11 with defendants. We have put them together.

12 THE COURT: No one told me this. I didn't hear
13 that. You heard it referenced, but you didn't tell the
14 courtroom deputy and I asked have they -- where are the nine
15 binders and what's in them and where is my copy?

16 MS. BAKER: Your Honor, I think they're in this
17 white box.; is that right.

18 MR. MILLER: It's in defendant's possession.

19 THE COURT: You can be seated. I don't need the
20 box. I do need -- I need a copy. I hope you got ten. I
21 need to see what you all are is doing. Have you all -- has
22 the plaintiff inspected the notebooks.

23 MS. BAKER: Yes, Your Honor.

24 THE COURT: Are they -- is the notebooks in order?

25 MS. BAKER: Yes, Your Honor.

1 THE COURT: And the defendant apparently created
2 the notebooks.

3 MS. MILLS: We put it together. They gave us what
4 exhibits they wanted and we added it to there.

5 THE COURT: And everything in here are exhibits?

6 MS. BAKER: Yes, Your Honor.

7 THE COURT: Labeled by trial exhibit number?

8 Okay. All right. All right. Neither side has an
9 objection, then -- will you take the box?

10 COURT OFFICER: Yes, sir.

11 THE COURT: Do you have an extra?

12 MS. MILLS: I think there's just nine, Your Honor.
13 I'm sorry.

14 MS. BAKER: We have one copy of our ten if you
15 guys happen to have an extra ten of your exhibits we could
16 kind combined it for the judge.

17 THE COURT: Just make me a copy so I know what the
18 jury has.

19 MS. MILLS: And we could run get you a copy.

20 THE COURT: Okay. You need this one, too. All
21 right. Anything else.

22 MS. BAKER: No, Your Honor. Thank you.

23 (Recess.)

24 THE COURT: All right. Be seated. So I've gotten
25 a note. I'm not sure what it means. We'll -- well, it just

1 says Judge Crenshaw, we have concluded our deliberations. It
2 doesn't say they have a verdict. So let's find out. Bring
3 them in.

4 (Jury present.)

5 THE COURT: All right. Be seated. So ladies and
6 gentlemen of the jury, I received your note signed by Mr.
7 Christian.

8 JUROR: Yes, Your Honor.

9 THE COURT: Okay. And it says we have concluded
10 our deliberations. Have you reached a verdict?

11 JUROR: Yes, Your Honor.

12 THE COURT: Okay. Can you pass it to me.

13 Okay. So I'm going to hand back your verdict
14 because it's not complete. And maybe you all should go
15 back -- and point your attention to question 2 and 5. And
16 ask you to complete that. Do you all want to go back to the
17 jury room and then you can all look at it. So let's do that
18 for a minute. Thank you.

19 THE COURT: 2 and 5. Take a look at that.

20 (Jury not present.)

21 All right. Be seated. The verdict for the record
22 to be clear, the verdict that the jury gave me did not answer
23 in question 2 yes or no regarding the Global Force Wrestling
24 mark. It had nothing there. And same thing for number 5.
25 It did not answer yes or no for the Global Force Wrestling.

1 So it's not complete and they need to complete it. So why
2 don't you all just hold tight.

3 (Recess.)

4 THE COURT: All right. Bring them in.

5 All right. Be seated. //, if you'll
6 pass up the verdict form now.

7 Okay. So //, I'm going to pass the
8 verdict back to you and ask you to publish your verdict.

9 Why don't you identify the question, question
10 number 1, and what your verdict is. And ask every -- then I
11 will poll the jury. Okay.

12 So you don't have to read the whole thing. Go
13 ahead.

14 JUROR: The answer to question number 1 was yes.

15 THE COURT: And then why don't you read the
16 trademark it refers to.

17 JUROR: Global Force Wrestling U.S. trademark
18 register number 5,392,147.

19 THE COURT: Good. Go ahead.

20 JUROR: Question number 2. GFW -- the first GFW
21 was no. Global Force Wrestling was no. And GFW logo was
22 yes. Global Force Wrestling no.

23 THE COURT: Go ahead.

24 JUROR: Question number 3, no.

25 Question number 4 was a --

1 THE COURT: Right.

2 JUROR: So we'll go to question number 5.

3 THE COURT: Correct.

4 JUROR: GFW, no. Global Force Wrestling, no. GFW

5 logo yes.

6 THE COURT: Okay.

7 JUROR: Global Force Wrestling, no.

8 THE COURT: All right.

9 JUROR: Question number 6, yes.

10 Question number 7, yes.

11 Question number 8, yes.

12 Question number 9, yes.

13 Question number 10, yes.

14 Question number 11, yes.

15 Question number 12, yes.

16 Question number 13, yes.

17 Question number 14, no.

18 Question number 15, no.

19 Question number 16, no.

20 Question number 17, no.

21 Question number 19, yes.

22 THE COURT: 18.

23 JUROR: 18 was a -- after --

24 THE COURT: Right. Okay. That's correct. Good.

25 JUROR: Question number 19 was yes.

1 Question number 20 was yes.

2 Question number 21 was no.

3 Question number 22 was no.

4 THE COURT: All right.

5 All right. Thank you. So //, is that
6 your verdict?

7 JUROR: Yes.

8 THE COURT: //, is that your verdict?

9 JUROR: Yes.

10 THE COURT: I need you to verbalize.

11 JUROR: Yes.

12 THE COURT: //, is that your verdict?

13 JUROR: Yes.

14 THE COURT: //, is that your verdict?

15 JUROR: Yes.

16 THE COURT: //, is that your verdict?

17 JUROR: Yes.

18 THE COURT: //, is that your verdict?

19 JUROR: Yes.

20 THE COURT: //, is that your verdict?

21 JUROR: Yes.

22 THE COURT: //, is that your verdict?

23 JUROR: Yes, Your Honor.

24 THE COURT: And //, is that your verdict?

25 JUROR: Yes.

1 THE COURT: All right. You can be seated. Thank
2 you. So the court officer will take the verdict form and
3 deliver it to the deputy.

4 So ladies and gentlemen, thank you for your
5 service. That's going to conclude today's court. I
6 understand that one of your number has a medical issue
7 tomorrow. So we will not be here tomorrow for court. And I
8 will ask you to return Wednesday at 9:00. Until that time,
9 again, you still can't talk about the case. You can't talk
10 about your verdict. You can't put it on your Facebook page
11 or tweet it or otherwise do anything about it because you --
12 we still have things and issues for you to look at. So I
13 would ask you again, put the case out of your mind until
14 Wednesday at 9 and then report to the jury assembly room in
15 the normal fashion.

16 Thanks very much. And be safe.

17 (Jury not present.)

18 THE COURT: All right. Be seated. I would assume
19 that you all want to digest the verdict. And what I would
20 suggest, I think, is -- why don't we get together tomorrow
21 let's say at 10. That will give you all a chance to digest
22 the verdict. As you could probably tell, plaintiff won on
23 some claims, defendant won on counterclaim, which creates
24 some interesting issues.

25 So why don't you all think about that as the Court

1 does. I do think it's obvious, now that you have the verdict
2 on liability, whether or not it doesn't make some sense for
3 you all to talk -- go back and talk to Aelix Fardon, because
4 now you know more than you did when you talked to him last.
5 So I'm going to ask you both, Ms. Mills and Mr. Miller, to
6 reach out to Mr. Fardon ^ ck. And I would like to see you
7 all meet with him at some point tomorrow, as well. Maybe
8 after we meet at 10.

9 All right. Mr. Miller, what do you think?

10 MR. MILLER: For once, Your Honor, I have nothing.

11 THE COURT: I'm sorry?

12 MR. MILLER: I said for once, Your Honor, I have
13 nothing.

14 THE COURT: Ms. Mills?

15 MS. MILLS: Your Honor, is it possible for us to
16 get the a copy of the verdict form?

17 THE COURT: Yeah. It will need to be a redacted
18 copy because the name of the foreperson has to be protected.

19 All right. Anything else.

20 MS. MILLS: No, Your Honor.

21 THE COURT: All right. So you all are going to
22 digest the verdict. You're going to reach out to Mr. Fardon.
23 I'll let him know you're going to give him a call. You're
24 going to plan on meeting with him sometime tomorrow
25 afternoon, and we'll get together at 10.

1 MR. MILLER: Your Honor, I guess one last thing.
2 Do you want our clients here at 10 a.m. or just the lawyers?

3 THE COURT: No. Just the lawyers.

4 MR. MILLER: Okay. Thank you.

5 THE COURT: Although, I think he's going to
6 need -- Mr. Fardon is going to need the clients when you all
7 meet with him. Okay.

8 Oh, and Mr. Nordholm will need to be here on
9 Wednesday.

10 (Court adjourned.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25